The American Political Science Review

VOL. XXXVI APRIL, 1942 NO. 2

FEDERAL-STATE ADMINISTRATIVE RELATIONS IN THE REGULATION OF PUBLIC SERVICE ENTERPRISES

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Recent years have seen increasing experimentation with and reliance upon interlevel administrative collaboration for adapting our traditional practices of government to the rapid extension and elaboration of national policies. In many instances, collaboration across the levels has been based upon the well-tried device of the grant-in-aid. In others, the practices of conferring, advising, transmitting official information, and acting jointly or interdependently for the performance of governmental services have been quickened. In yet other instances where federal as well as state agencies now regulate the same areas of business enterprise, a considerable body of collaborative interlevel practice has been developed. It is with this last field, especially as the collaborative action is directed toward the regulation of public service enterprises, that we are here concerned.

Prior to 1933, federal regulation of public service enterprises had a long experience with railroads (1887), a longer experience with banks coming under the national system (1863), and a shorter experience under the Federal Reserve System (1913),[1] and a yet shorter experience with water-power enterprises (1920). States and localities developed agencies and practices for the regulation of railroads and local transportation systems, banks, water, gas, telephone, and electric utilities, and, in the twenties, highway bus and trucking operations. The subjects covered and the extent of the

[1] Legalists may quarrel with this classification of bank regulation, and their legal reasons will be accepted as legal reasons.

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authority of the state agencies varied from state to state. Bank regulation on the two levels tended to proceed independently. Federal water-power regulation tended to facilitate state regulation of electric utilities from case to case, largely without the establishment of continuing associative practices. The Interstate Commerce Commission and the state railroad regulation authorities, prior to 1920, alternately spoke of their joint problems—sometimes words resulted in temporary operational association—and scowled at each other over contested areas of jurisdiction. Following the Transportation Act of 1920, the judicial settlement of federal dominance in railway regulation, and the adoption of facilitating administrative agreements, regular practices of interlevel collaboration in certain aspects of railroad regulation developed.[2] The I.C.C. had since 1910 regulatory authority over certain interstate aspects of telegraphy and telephony, but, in its emphasis upon railroad regulation, largely left these aspects of communication alone. The regulation of radio communication has not had significant interlevel administrative aspects. The regulation of aëronautics, though primarily federal, had included state requirement of federal license for intrastate operation and, in a few cases, state license for such operation.[3]

While the states were nearly alone in the regulation of public service enterprises, with the exception of railroads, the enterprises grew and were combined into operating units transcending state lines, financial control ascending, at the same time, through pyramids of corporations to holding companies. Both the horizontal and vertical movements removed aspects of utility operations from state authority, either through judicial protection of interstate commerce from state action or through the inaccessibility of the corporate kinsfolk.

In the period 1933 through 1935, Congress by a series of acts illuminated much of this utility shadowland, provided standards and agencies for the regulation of aspects which had outgrown the states, protected in considerable degree from federal administrative action the spheres of public service enterprise traditionally within effective state authority, and, with a few exceptions, provided for

[2] For a history of I.C.C.-state relations to 1935, see National Association of Railroad and Utilities Commissioners, *Proceedings*, 1935 (New York), pp. 313–52. All issues referred to herein are published by the State Law Reporting Co.

[3] *Ibid.*, 1932, pp. 550–51, 557, for tabulations of state aëronautics regulation of that date.

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federal-state collaboration in the administration of portions of the acts.[4]

The geometry of politics in these legislative movements frequently included demands by and in the name of state regulatory commissions for regulation of the aspects of public service enterprises which had escaped these agencies, for the protection of their own jurisdiction, and for assistance in their regulatory problems. Thus federal-state collaboration in the administration of the new acts was in part a result of representations on behalf of the state regulatory commissions at the legislative phase.

The chief instrument of the states in these representations was the National Association of Railroad and Utilities Commissioners. As early as 1925, the Association proposed a motor carrier act including many of the provisions of the present act, and in the following years it asked the enactment of a revised plan which in 1935 was substantially adopted.[5] The mark of the National Association is likewise found in the Communications Act, "the representatives of this Association [being] able to secure the incorporation into the bill of [a] provision" excluding federal authority over local telephone exchange service, even where interstate.[6] In the pre-legislative phase of the Public Utility Act, representatives of the National Association conferred with the Federal Power Commission and agreed upon the limits of federal authority to be specified in the act and upon the provisions for federal-state collaboration.[7] In all of these instances, the state officials congratulate themselves that the "excesses" of federal jurisdiction over railroads are not to be repeated under the new acts. Descriptions of the practices of interlevel action under the various acts, with indications of tendencies where possible, are found in the following sections.

INTERSTATE COMMERCE COMMISSION RELATIONS WITH THE STATES

Federal-state administrative collaboration in the regulation of transportation has been conditioned by the issues and facts of constitutional jurisdiction over rail and motor carriers. When there has

[4] The Securities Act and the Federal Deposit Insurance Act in 1933, the Securities Exchange Act and the Communications Act in 1934, the Motor Carrier Act, the Public Utility Act, and the Banking Act in 1935 were the congressional contributions.

[5] National Association of Railroad and Utilities Commissioners, *Proceedings*, 1935, pp. 352–58.

[6] *Ibid.*, pp. 360–61. [7] *Ibid.*, pp. 365–67.

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been competition for jurisdiction between the two levels, or when impending judicial decisions made the boundaries of jurisdiction unclear, collaboration has been infrequent or restricted to uncontroversial matters. When constitutional uncertainties have been removed, and when Congress has given specific authorization, interlevel action has developed freely.

Railroad Regulation. Early in the history of the Interstate Commerce Commission, members saw the desirability of coördinating their work with that of the state commissions. Conferences ensued, but agreement could be reached only on matters such as the accounts and statistics which the railways should keep and report. Differences over the rôle which the federal agency was to perform prevented additional agreement.[8]

The desirability of interlevel collaboration in the treatment of disparities between interstate and intrastate determinations of railway rates was expressed in recommendations of the I.C.C. several times prior to 1920. The Transportation Act of that year, for the first time, gave legislative authorization and direction for the interlevel treatment of such difficult issues. The act (1) required the I.C.C. to notify state regulatory commissions when any proceeding before the Commission brought into issue determinations (orders or regulations) of the state commissions on matters of rates, services, and other practices; (2) authorized the I.C.C. to confer with state commissions on rate matters and to hold joint hearings with state commissions where the authority of the states may be affected by the Commission's action; and (3) authorized the Commission to avail itself of the coöperation, services, records, and facilities of state authorities in enforcement of the act.[9]

These provisions were implemented by an agreement entered into first in 1922 and revised in 1925 stating policies and procedure for the use of the joint devices. Joint committees composed of five from the I.C.C. and eight from the association of state commissions drew up the agreements in both cases.[10] After the issues of jurisdiction under the new act had been judicially clarified, use of the joint

[8] I. L. Sharfman, *The Interstate Commerce Commission* (New York, 1931–37), I, 82–83. See the excellent article by Martin L. Lindahl, "Coöperation Between the Interstate Commerce Commission and the State Commissions in Railroad Regulation," *Mich. Law Rev.*, Vol. 33 (1934–35), 338–97.

[9] 41 *Stat.* 484. Sharfman discusses the provisions in *op. cit.*, II, 308–09.

[10] Sharfman, *op. cit.*, II, 310–16.

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hearing device became frequent, reaching its height in the mid-twenties. Table 1 indicates the trend in this activity, showing a tendency to decline since 1926 and becoming accentuated during the present decade.[11]

TABLE 1. NUMBER OF CASES IN WHICH JOINT STATE-I.C.C. HEARINGS WERE HELD ON RAILROAD MATTERS
1922–39[a]

Year	*Car Service Cases*	*Construction and Abandonment Cases*	*Rate Cases*	*Total Cases*
1922–25	3	36	41	80
1926	(6)[b]	44	51	101[c]
1927	6	18	28	52
1928		38	28	66
1929		36	26	62
1930		41	22	63
1931		25	20	45
1932		19	22	41
1933		57	14	71
1934		22	16	38
1935		7	14	21
1936		15	7	22
1937		14	10	24
1938		6	10	16
1939		9	14	23
1940		2	8	10

[a] Source: through 1929, I. L. Sharfman, *The Interstate Commerce Commission*, II, 317; since 1929, I.C.C., *Annual Reports* (see contents for item, "Coöperation of Federal and State Commissions").

[b] Parentheses signify number of states acting in such cases.

[c] The total given assumes that each of the six states in the first column acted in one case.

Although the number of cases tended to decline during the thirties, it is said that "most of the important general rate cases which have been heard by the Interstate Commerce Commission since the adoption of the agreement have been coöperative cases."[12] State commissioners, however, received the impression that the I.C.C. did not favor the use of the joint hearing device in the so-called

[11] See Lindahl, *op. cit.*, for characteristics of the joint hearing.

[12] National Association of Railroad and Utilities Commissioners, *Proceedings*, 1935, p. 340.

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Shreveport cases.[13] The I.C.C., however, disclaimed such an attitude and invited the participation of the states in these actions.[14] In 1937, the National Association of Railroad and Utility Commissioners adopted, with the approval of the I.C.C., a revision of its agreement for joint hearings in which attempt was made to clear up this misunderstanding and to define more specifically other mutual understandings of the federal and state commissions.[15] As a result of the policy shifts occurring in connection with these negotiations, it is said that "Shreveport litigation in the courts has now almost disappeared."[16] The Transportation Act of 1940 gave the I.C.C. authority to reimburse state commissioners for expenses incurred by them in attending joint hearings.

Motor Carrier Regulation. With the passage of the Motor Carrier Act of 1935, the legislative basis was prepared for a new set of relationships between the I.C.C. and the state commissions regulating trucks and buses. The act established a system of federal (I.C.C.) regulation of interstate commerce by motor carriers, including complete federal authority with respect to permission to operate, rates, safety considerations, etc. All states but one had some degree of regulation of trucks or buses, but their jurisdictions had, in part, been judicially eaten away by rulings preserving the freedom of interstate commerce. The loss of jurisdiction by the states resulting from the strong, inclusive terms of the federal act was made more palatable to the states by the inclusion of provisions for state participation in administration. The act directs the I.C.C. to refer certain cases for original hearing and provisional determination to joint boards consisting of representatives of the state governments involved in the issue, and permits I.C.C. reference of additional cases to such joint boards. The matters required to be so referred are: (1) those in which the motor carrier operations or proposed operations involve no more than three states; and (2) with respect to type of issue, those involving application for, sus-

[13] Cases in which the I.C.C. increases intrastate rates over the objection of state commissions on the ground that the state-prescribed rates discriminate against interstate commerce. The name derives from the judicial decision allowing such I.C.C. orders.

[14] National Association of Railroad and Utilities Commissioners, *Proceedings*, 1935, pp. 342–52, 372–87.

[15] *Ibid.*, 1937, pp. 49–52, 54–56; text at pp. 62–69.

[16] *Ibid.*, 1939, p. 170.

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pension, or revocation of license, etc., application for privilege of merger, etc., complaints as to violation of law and rules, and complaints as to rates and charges.[17]

Joint boards ordinarily consist of a member from each state affected by the matter at hand. When the need arises for such a board, the Commission must notify the commissioners of the states concerned, asking them to *nominate* a person from their membership or otherwise. In case the state commission fails to nominate, the governor may do so. If it approves of the nominees, the Commission *appoints* them as members of the particular boards. Subsequently, the difficulty of authorizing substitutions on short notice resulted in I.C.C. appointment of as many as five board members from each state for each board, so that any one of them would be qualified. If two or more members of a board are appointed, the board may proceed to operate even though a third or other state does not nominate. Boards, once formed, continue in existence until dismissed by the Commission. And a state may at any time offer a new nominee in place of its representative on a board. While on duty, members of state boards receive travel and subsistence from the federal government. While sitting on a case, joint boards have the same rights, powers, and duties as examiners of the Commission.[18] The I.C.C. "has never appointed as a member of a joint board anyone except a member of a state agency or an employee of a state agency, but the Commission has never refused to appoint a nominee who is either a member or an employee of a state agency. Joint board members are usually employees rather than heads of state agencies."[19]

In addition to the required use of joint boards, "the Commission is authorized to confer with or to hold joint hearings with any authorities of any state in connection with any matter arising in any proceedings under" the Motor Carrier Act, and is "also authorized

[17] 48 *Stat.* 548. For a thorough analysis of the genesis, and the administrative and constitutional considerations at the time of enactment, see Paul G. Kauper, "Utilization of the State Commissioners in the Administration of the Federal Motor Carrier Act," *Mich. Law Rev.*, Vol. 34 (1935–36), 37–84.

[18] 49 *Stat.* 549. See Kauper, *op. cit.*, for considerations of conflict of office in these appointments.

[19] Attorney-General's Committee on Administrative Procedure, *Interstate Commerce Commission* (Washington, Department of Justice, Monograph No. 24), II, 169.

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to avail itself of the coöperation, services, records, and facilities of such state authorities as fully as may be practicable in the enforcement or administration" of the act.[20]

Orders recommended by joint boards have the same status as orders recommended by an examiner or member of the Commission who has conducted a hearing. That is, the order stands as the order of the Commission unless protested by an affected party or revised on the initiative of the Commission. By an amendment of 1938, joint boards may, if they do not wish to recommend an order, make findings of fact on the basis of which the Commission will enter an order.[21]

In undertaking the administration of the act, the Commission considered it necessary before establishing rules and regulations for interstate motor carriers to consider "the present requirements of state and municipal authorities," and to avail itself of the "advice and counsel of the several state regulatory bodies having jurisdiction over motor carrier operations."[22] Regulations as to the forms of accounts to be kept by motor carriers were put into effect by the Commission on January 1, 1938, and monthly, quarterly, and annual reports were prescribed. The Commission says: "It is gratifying to report that splendid coöperation with state authorities has been received in respect to these accounting regulations." To meet the situation in which many carriers would have to report to at least two agencies, "informal correspondence was inaugurated with the state authorities, with the result that in the case of all states, save one, in which forms of accounts are prescribed for intrastate motor carriers, the carrier will be required to keep but one set of accounts, and that is to be in conformity with our requirements."[23] The number of states requiring annual reports from carriers under their jurisdiction in conformity with the reports to the federal agency was, in 1940, twenty-one; and additional states were contemplating establishing identical annual report requirements.[24]

The formulation of rules for equipment and operation in the interest of safety presented knotty problems of differing practice. The

[20] 49 *Stat.* 550. One of the few congressional recognitions of official associations, and an intimation of the congressionally anticipated relations under the act is the provision that space in the I.C.C. building, or otherwise, should be provided for the national association of state commissioners. Such space was provided in the I.C.C. Building. [21] 52 *Stat.* 1237.

[22] Interstate Commerce Commission, *Annual Report*, 1935, p. 74.

[23] *Ibid.*, 1938, p. 84. [24] *Ibid.*, 1940, p. 107.

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Commission reported in 1936 that it had found the states "ready and willing to coöperate in every way, to our great benefit" in consultations on this matter at each stage.[25] Rules were promulgated at the end of 1936, and were accompanied and followed by wide adoption by the states. Some states had no rules, and in some others the existing state rules did not conflict with new federal rules. By July 1,1940, forty states had adopted part or all of the Commission's motor carrier safety regulations.[26]

A peculiar instance of federal dependence on state standards is found in the I.C.C. regulations relating to the companies with which motor carriers may insure against liability. Says the Commission:

> "Under our rulings any insurance company is qualified to file certificates of insurance in behalf of a carrier if it is licensed to do business by each state in which the operations of the carrier are covered by the insurer's liability. We have, in effect, adopted for our purposes the standards of eligibility and responsibility for insurance companies established in the several states for the protection of their citizens"[27]

The putting into effect of federal license provisions created difficult problems in the solution of which the states gave aid. A "grandfather clause" of the act authorized the issuance of federal licenses to all motor carriers operating in interstate commerce as of certain dates. Over 80,000 operators applied for licenses on this basis, and much trouble was encountered in verifying the information submitted in applications. In 1936, the Commission said: "The facts in regard to bona-fide operation on the 'grandfather' date, including routes and character of traffic handled, are being checked on the records of the state authorities, and with their help," as well as by other means.[28] Though having some field force for the detection of violations of rules and license requirements, the I.C.C. has been in some degree dependent on the willingness of the industry to police itself, and upon state commissions and officials. In 1936, the I.C.C. reported that "state commissions are reporting conditions to our field forces;"[29] while in 1939, a "nation-wide survey" of compliance with the federal rules regarding hours of service of drivers was conducted, "in which state agencies coöperated in many cases."[30]

Although it is not evident that the joint board device for the

[25] *Ibid.*, 1936, p. 84. [26] *Ibid.*, 1940, p. 115. [27] *Ibid.*, 1937, p. 73.
[28] *Ibid.*, 1936, p. 71. [29] *Ibid.*, p. 83. [30] *Ibid.*, 1939, p. 117.

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conduct of hearings has been employed to its anticipated degree, the system has apparently had wide use. As early as 1936, the Commission reported that "at least one joint board representative from each state is engaged in this work at all times."[31] Though rarely is a case set for joint board hearing except where the Commission is under statutory compulsion to offer that form of hearing to the states affected, well over one-half of the cases under the act which are set for formal hearing are heard by joint boards.

In Volumes II through VII of the I.C.C. Motor Carrier Cases appear 453 cases heard by examiners of the I.C.C. The corresponding number for the joint boards is 825. In these cases, the joint boards had a better record in getting their rulings sustained by the I.C.C. than did the latter's examiners; nearly 14 per cent of the examiner's rulings being reversed or modified, compared with 10.4 per cent for the joint boards.[32] These tabulations omit one volume which reports only "finance" cases.

The arrangements for scheduling the large numbers of joint board cases have presented a difficult task, and the demands upon state staffs for services on joint boards have been heavy. Although there is some protest from the state side regarding this burden, the general attitude has been: "We asked to participate and, therefore, we should do our part."[33] That this has not been the universal attitude of state representatives is shown by the observation that in twenty per cent of the hearings scheduled before joint boards no state representative appears, and that in an additional portion only one joint board member appears. An examiner of the I.C.C. Motor Carrier Section, known as a joint board agent, attends each joint board hearing to "advise and assist" the board. When the board members do not appear, the joint board agent conducts the hearing. It appears that with a full board present the I.C.C. agent generally conducts the hearing and almost invariably drafts the report and recommended order.[34]

[31] *Ibid.*, 1936, p. 79.

[32] National Association of Railroad and Utilities Commissioners, *Proceedings*, 1938, p. 218.

[33] *Ibid.*, 1936, pp. 171–89, 199–229. In more recent years National Association members were somewhat worried about jurisdictional problems, viz., the assumption of federal jurisdiction over intrastate carriers who trans-ship goods which are in interstate commerce.

[34] Attorney-General's Committee on Administrative Procedure, *Interstate Commerce Commission*, pp. 169–70.

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A few cases have involved the use of the joint hearing—as in railroad cases—in which representatives of the states sit with a section of the I.C.C., participate in the hearing, and express their views on the findings and the proper rulings to the federal commissioners, who, legally, make the decision. These cases have involved motor carrier insurance regulations,[35] freight classifications, and rates.[36]

The conditions prevailing with respect to motor carriers seem to have been propitious for considerable degrees of federal-state interaction. State experience in truck and bus regulation, the previously unregulated interstate commerce, legislative recognition of a place for the states in federal enforcement, the hugeness of the regulatory task, and an attitude among the federal administrators favorable to collaboration with the states have combined to produce apparently mutually satisfying relations at many points in the administration. If experience with the joint boards has indicated a need for revision of the device, or a redefinition of the cases in which it should be used, the facilities of the National Association are available for a reconsideration of the problem.

FEDERAL DEPOSIT INSURANCE CORPORATION

Activities pursuant to the creation of the Federal Deposit Insurance Corporation in 1933 have created a new web of federal-state relations. Not only have new interofficial activities developed; in addition, federal jurisdiction over banking has been so extended that the portion remaining solely within state jurisdiction is very small.

At the inception of Federal Deposit Insurance operations, American banks fell into three classes according to their supervisory authorities—national banks, state banks which were "members" of the Federal Reserve System, and state banks not "members." The first two classes were required by the act creating the F.D.I.C. (in order to retain their class status) to insure their deposits with the Corporation. The third class (state banks under sole state authority) were permitted to apply to the Corporation for insurance of deposits. It is with respect to this group that the new interlevel relations have been developed.

[35] I.C.C., *Annual Report*, 1938, p. 220; *ibid.*, 1939, p. 170.
[36] *Ibid.*, 1940, p. 37.

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The statutory terms, with respect to the third class, provided that:

"Any State bank which is not a member of the Federal Reserve System, with the approval of the authority having supervision of such State bank and certification to the Corporation by such authority that such State bank is in a solvent condition, shall, after examination by, and with the approval of, the Corporation, be entitled to become a member of the Fund."[37]

By the end of the calendar year 1933, over 7,800 applications were received, and the applications of nearly 1,000 rejected.[38] Although the F.D.I.C. established a system of bank examination and conducted examinations of applicant banks, the following statement in a report of the Corporation suggests that the certifications of solvency by state authorities were critical in determining admission to the insurance fund. Said the chairman of the Corporation:

"It was natural, in view of the speed with which deposit insurance originally was put into effect and in view of the fact that certification of mere solvency was the sole requirement for admission to the temporary insurance fund, that some banks should become insured that had meager chances of long survival. It was clearly the intent of Congress, however, that insurance should be extended to the greatest possible number of depositors. Leniency on the part of supervisory officials in certifying the solvency of institutions under their jurisdictions, therefore, was probably socially preferable to a too rigid measurement of asset sufficiency."[39]

Thus, at the stage of admitting banks to the insurance system, it would seem that the federal agency depended in considerable degree on determinations made by state bank regulating authorities.

F.D.I.C. relations with the states have assumed three other prominent phases: the F.D.I.C. stimulation of state legislatures to pass acts facilitating corporation operations, the case-by-case relations between the Corporation and the state authorities when state banks get into insecure condition, and the attempts by the F.D.I.C. to alter and make uniform the standards used by state authorities in chartering and regulating banks.

State legislation sought by the F.D.I.C. was the authorization of state bank participation in the insurance system, authorization of the appointment of the F.D.I.C. as receiver or liquidating agent of closed insured banks, authorization of borrowing by state banks from the Corporation, specific authorization for collaboration be-

[37] 48 *Stat.*, 179.

[38] F.D.I.C., *Report of Operations*, 1934 (Washington, 1934), p. 3.

[39] F.D.I.C., *Report to Insured Banks*, June 30, 1939 (Washington, 1939), pp. 2–3.

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tween state authorities and F.D.I.C. examiners in making examinations and in the exchange of information, and legislation giving state bank authorities greater control over the chartering of new banks.[40] By 1936, these proposals "had been adopted in whole or in part in most of the states."[41] More specific indication of the effects of this influence is to be seen in the statement in a report for 1937 that the "appointment of the Corporation as receiver for suspended insured state banks was possible in 31 states. In 7 other states, the state banking authorities may appoint the Corporation to assist in the liquidation of closed banks."[42]

Interlevel activities in the treatment of specific cases defy generalized description and defy much more the demarcation of trend lines. However, a few types of such action can be pointed out. Through its periodic examination of banks, the F.D.I.C. may discover practices which are illegal, "unsafe, or unsound," facts which may become grounds for discontinuing the insurance of deposits. When these findings occur, the F.D.I.C., according to its published statement of practices, cites the bank to its supervising authority—the state bank regulation agency in the case of state banks. After a waiting period of 120 days, the F.D.I.C. reëxamines the bank to see whether it has on its own initiative, or the initiative of the state authority, repaired the conditions complained of, the Corporation proceeding thereafter on the basis of such findings.[43] There is implicit evidence from the F.D.I.C. reports that the federal agency participates with the state agencies in a much more informal manner than the described procedure would imply. Where relations are "good," it would seem that there is a free exchange of information regarding "troubled" banking institutions and a negotiated treatment of the issues of the desirability and practicability of saving banks by loans, mergers, or both, or of proceeding with liquidation and the payment of insured depositors. For instance, in 1937, the Corporation reported that it was "coöperating with several supervisory authorities in making a complete survey of the banks under their supervision with a view to determining what corrective steps can be taken with regard to weak and unsound banks."[44] Although the issues of jurisdiction over the property of closed insured banks seem generally to have been amicably settled between the levels,

[40] F.D.I.C., *Annual Report*, 1936 (Washington, 1937), pp. 32–33.
[41] *Ibid.* [42] *Ibid.*, 1937, p. 24. [43] *Ibid.*, 1936, pp. 16–17.
[44] F.D.I.C., *Report to Insured Banks*, June 30, 1937 (Washington, 1937), p. 3.

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the Corporation secured the enactment of an amendment in 1938 relieving it of the obligation to pay depositors in closed state banks until the Corporation's rights to the depositor's share of the assets of the bank are clearly recognized by state law, administrative authority, or otherwise—an indication that a sanction was needed in some states.[45]

F.D.I.C. has attempted to promote policies of banking and state administration of banking which in the opinion of the Corporation's directors would give the insurance program the greatest likelihood of success. Viewing the federal assumption of deposit insurance as possibly conducive to less caution on the part of bankers and less sense of responsibility on the part of state administrations, and reminding themselves that commercial banking must have a better record in the future than in the past if the existing system of insurance is to succeed, the directors have undertaken, in addition to the formulation of banking rules and a periodic examination program, programs of securing the assistance of the state administrations in the effectuation of the F.D.I.C. banking policies. Two programs illustrate this movement. One is that in which the F.D.I.C. discourages the chartering of state banks when the capitalization, the quality of the proposed managers, and the banking and community conditions indicate that the life of the bank is not certain to be long. The Corporation apparently encourages consultation by the state administrators on individual applications for charters and, by provisionally granting or withholding the insurance privilege, attempts to influence state chartering policy. For instance, in one series of reports the Corporation lists the number of banks chartered during the report period which are uninsured—seven, four, and zero, in a recent series. The Corporation said in 1939 that "supervisory officials have continued to coöperate in preventing the organization of unsound banks and in chartering only banks that could qualify for deposit insurance,"[46] and in 1940 noted that only two of the thirty-two banks first chartered during the year were uninsured at the end of the year.[47]

The other program illustrating this Corporation policy is that of securing agreement to the application of its standards by states in their bank examination activities.

[45] 52 *Stat.*, 442.
[46] F.D.I.C., *Report to Insured Banks*, June 30, 1939, p. 2.
[47] *Ibid.*, Dec. 31, 1940, p. 3.

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"In June, 1938, agreement was reached among the supervisory officials of the country with regard to the adoption of uniform standards of bank examination. From the standpoint of supervisors in general, and the Federal Deposit Insurance Corporation in particular, adoption of these standards will make supervisory policy more effective. The standards with regard to the determination and criticism of the quality of loans and securities conform in all essential respects to those which have been used by the Federal Deposit Insurance Corporation."[48]

Reviewing F.D.I.C.'s short history, one may note that the federal agency depended heavily on state bank authorities in the inception of the insurance program and has, especially since 1935, developed practices of association with state agencies in the treatment of particular cases and in the formulation of bank regulation policy.

FEDERAL COMMUNICATIONS COMMISSION

The Communications Act of 1934, in merging the old duties of the Federal Radio Commission and the duties of regulation of interstate telegraph and telephone operations under the new Federal Communications Commission, made a number of allusions to how the new commission should or could act with the states. Any "body politic or municipal organization or state commission" was given specific permission, along with "any person," to file complaints with the federal Commission against any communications common carrier.[49] In the event of an application to the Commission by a carrier for permission to extend or add to its lines, the Commission is directed to give notice to the "governor of each state in which such additional or extended line is proposed to be constructed or operated, with the right to be heard."[50] Likewise, in cases of application for permission to consolidate, merge, or purchase telephone companies, the Commission is under obligation to give notice and opportunity for hearing to affected states.[51] The Commission is given authority to exempt from its rules regarding the keeping of accounts, records, and memoranda, and the charging of depreciation, "the carriers of any particular class or classes in any state . . . where such carriers are subject to state commission regulation with respect" to these matters.[52] Before prescribing any requirements as to the records and accounts which carriers are to keep, the Commission is directed to "notify each state commission having jurisdiction with respect to any carrier involved, and . . . give reasonable

[48] *Ibid.*, June 30, 1939, p. 2. [49] 48 *Stat.*, 1073. [50] *Ibid.*, p. 1076.
[51] *Ibid.*, p. 1080. [52] *Ibid.*

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opportunity to each such commission to present its views, and . . . receive and consider such views and recommendations."[53] The Commission is given authority to classify telephone property according to whether or not it is used in interstate commerce, but not before notice and opportunity for hearing is given to the affected states.[54]

The act of 1934 permits the use of joint boards in the conduct of hearings. Unlike the provision of the Motor Carrier Act, the reference of cases to joint boards is discretionary under the Communications Act. "The Commission *may* refer any matter arising in the administration of this act to a joint board composed of a member . . . from each of the states in which the wire or radio communication affected by or involved in the proceeding takes place or is proposed."[55] Boards are to be formed by appointment of the Commission from nominees proposed by state commissions. The Commission is authorized to confer with any state commission having jurisdiction over the same carriers, and, in the typical legislative phrase in these matters, "to avail itself of such coöperation, services, records, and facilities as may be afforded by any state commission."[56]

Although interlevel action under these provisions has apparently fulfilled the minimum statutory requirements, the Commission has been little inclined to extend associative activity to the degree permitted by the act. Interaction has apparently occurred freely in the formulation of rules for keeping and reporting accounts by carriers and in the exchange or transfer of information resulting from inquiries, but has not been extended to overt inclusion of the state authorities in the formulation of substantive policy or in the determination of issues in particular cases through the joint board or joint hearing devices.

The F.C.C. has taken the view that previous frailty of regulation of telephone and telegraph, especially on the part of states, has resulted from lack of requisite information regarding the practices and policies of the multicorporate communications giants. Complexity of the problem of information and lack of jurisdiction over

[53] *Ibid.* [54] *Ibid.*

[55] *Ibid.*, p. 1098. This is the only authorization in the act for state participation in the regulation of any aspect of radio communication. The Commission has, in its radio licensing work, come into contact with city and state police, and with police groups. *Annual Report*, 1935, pp. 37–40. [56] 48 *Stat.* 1098.

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its sources have generally frustrated state attempts to secure the necessary facts. The Commission considers its primary function in this matter to be the collection and formulation of the illusive data, both for its own use and for distribution to state authorities.[57] As directed by statute, the Commission has requested and considered state commission views—sometimes in conference with the state officials—on the problems of utility accounts and records which would produce the desired information.[58] The Commission's statistical compilations resulting from the accounting rules and reporting system have been freely circulated to state commissions as well as to other interested persons.[59]

A peculiar incident which tends to confirm state interest in and approval of the Commission's rules with respect to the keeping of telephone accounts was the intervention by the National Association of Railroad and Utilities Commissioners in judicial proceedings in which the Commission's authority was being contested by the American Telephone and Telegraph Company. The Company was protesting against the order that its accounts be adjusted to show its property at original cost, and the Association intervened in support of the Commission order.[60]

By joint resolution, Congress in 1935 authorized the F.C.C. to make a long-term study of the American Telephone and Telegraph Company and other telephone companies. Through the distribution of the findings of this study, the states have been provided with much information of use in regulation not available prior to F.C.C. or through the periodical reports of companies to F.C.C.

[57] This view is expressed in Federal Communications Commission, *Investigation of the Telephone Industry in the United States*, House Document No. 340, 76th Cong., 1st Sess. (Washington, 1939), p. 569.

[58] *Annual Report*, 1935, p. 66; *Annual Report*, 1937, p. 93. These interactions produced a negotiated agreement after there had originally been many differences. The "Telephone Division has pursued a policy of close coöperation, in all matters relating to telephone accounting, with state regulatory bodies and with the National Association of Railroad and Utilities Commissioners—particularly with the Association's Committee on Statistics and Accounts of Public Utility Companies. . . . The coöperation and assistance of representatives of state regulatory bodies and of the association and its committee are gratefully acknowledged." *Ibid.*, p. 94. Telegraph company accounts received associated treatment the following year. *Ibid.*, 1938, p. 30. See also National Association of Railroad and Utilities Commissioners, *Proceedings*, 1935, pp. 362 ff.

[59] *Annual Report*, 1935, p. 70.

[60] F.C.C., *Annual Report*, 1937, p. 92. The case was American Telephone and Telegraph *et al.* v. U.S. and F.C.C., 14 Fed. S., 121, 299 U.S. 232. The order was upheld.

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"Many reports developed during the Telephone Investigation were distributed to the State Commissions. In addition to these reports, the Telephone Rate and Research Group, one division of the investigatory organization, has therefore prepared and the Commission has distributed to the State Commissions its comprehensive reports on the make-up of Bell System toll-rate schedules in force throughout the country, and on the 'principles' which apparently underlie Bell System toll-rate structures. . . . The National Association of Railroad and Utilities Commissioners, through its officials and representatives, as well as the state commissions individually, have at all times offered their full coöperation in connection with the efforts of the Telephone Rate and Research Department, and the Commission deems the development and practice of full and frank coöperation on the many telephone rate problems of joint import to the states and the nation to be a matter of sound public policy."[61]

State commissions, upon invitation, sent representatives to hearings and conferences, and supplied "copies of records, briefs, and exhibits in telephone cases heard and decided by them."[62] The advice of state commissions was sought in the staffing of the federal investigation, and in some cases the loan of state personnel was secured.[63]

Though there has been free interaction upon most matters, there has been little interlevel participation in the formalities of administrative adjudication. The explanation given is that few cases have arisen in which there has been a desire for such interlevel action. In 1938, an agreement was entered into between the Communications Commission and the state commissioners—through the National Association of Railroad and Utilities Commissioners—stating their understanding of the conditions under which formal joint action is proper under the act, and the procedures to be followed in setting up and using the joint board and joint hearing devices.[64] Prior to the adoption of the agreement, the telegraph companies had petitioned the federal agency for an increase in interstate rates, giving notice that they anticipated raising intrastate rates as well. Upon negotiation between the federal agency and the Committee on Coöperation of the National Association, it was agreed that the hearing on the case should be "coöperative." The Commis-

[61] F.C.C, *Proposed Report; Telephone Investigation* (Washington, 1938), p. 770; see also F.C.C., *Final Report of the Telephone Rate and Research Department* (Washington, 1938), pp. 71–72.

[62] Commissioner Paul A. Walker, in National Association, *Proceedings*, 1935, p. 400. [63] *Ibid.*, p. 403.

[64] The text of the agreement is on pp. 228–33 of the *Proceedings* of the National Association.

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sion requested the National Association to appoint a committee to represent the states in the hearings, and although no agreement on procedure existed at the time, the National Association complied. "After an extended hearing and consideration, the application of the telegraph companies was denied. In this decision, all of the state commissioners concurred with the majority of the Federal Communications Commission."[65]

In another case, a telephone company serving a metropolitan area in two states attempted to enlarge its "exchange" (local call) area, reducing its "toll" (long distance and hence interstate, under the statute) business, thus retreating from federal jurisdiction. The federal Commission instituted a hearing in the matter and invited the relevant states to appoint representatives to sit with federal representatives at the hearing. No other cases involving collaborative use of the formal hearing procedures had arisen through fiscal 1940.

Many of the complaints received by the federal Commission relate to conditions in local exchanges, and are thus outside federal jurisdiction. "Upon the receipt of a complaint relative to a matter beyond the scope of the Commission's jurisdiction, the complainant is advised of such fact and referred to the proper local or state regulatory authority."[66] In some state cases, federal investigational employees have been loaned to the states.[67]

Apparently, federally collected information has passed freely to the states. The question arises as to the usefulness to states of utility accounts established on bases other than those approved for rate-making by state statute, judicial decision, or commission ruling. In so far as states maintain different standards from those imposed by the federal Commission, it would seem that such records would have limited usefulness. Conceivably, the availability of full information upon one basis may result in a tendency to adopt that basis rather than the continued use of bases with respect to which only incomplete information, or information provided at the discretion of the companies, is available. No evidence is here adduced to indicate any such tendency. The stakes involved in communication regulation are so great that the possibility of shifts in policy at both federal and state levels precludes estimates of future federal-state administrative relations.

[65] *Ibid.*, 1938, p. 227. [66] *Ibid.*, 1936, p. 37. [67] *Ibid.*, 1938, p. 150.

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FEDERAL POWER COMMISSION

Prior to 1935, Federal Power Commission relations with the states were concerned almost wholly with hydroelectric power. States or municipal corporations, along with private corporations, were applicants to and licensees of the federal agency for the use of points along navigable streams for water-power production. Licensees, governmental or public service, were under federal regulation in the construction of such works, and, when not regulated by state commissions, in matters of accounts, rates, and services. To states regulating electric utilities, the Federal Power Commission provided available information about federal licensees. There was also collaboration with the states in planning the use of water power, in federal collection of fees from water-power licensees for use of state lands, and in incidental matters, such as federal evaluation of privately operated hydroelectric works which a state wished to purchase.[68]

The Public Utility Act of 1935[69] and the Natural Gas Act of 1938, by endowing the Power Commission with authority to regulate some intrastate aspects of interstate electric and gas utilities, and by specific references to action with the states in these matters, have established a new system of operating relationships between the levels. The act of 1935 (1) authorized use of the joint board composed of representatives of the affected states in the original hearing and determination of cases arising under the act; (2) authorized the conduct of joint hearings between the federal agency and representatives of one or more states in matters of related juris-

[68] See Federal Power Commission, *Annual Report*, 1934 and previously. See also National Association of Railroad and Utilities Commissioners, *Proceedings*, 1935, pp. 362–65.

[69] Though none of the acts administered by the Securities and Exchange Commission specifically provides for collaboration with state officials, such relations have developed at various points. Information secured by the S.E.C. from utility holding, intermediate, and service company reports based on a uniform accounting system is freely supplied to state utility regulation authorities, as is information derived from the registration statements filed with the Commission by utilities. The S.E.C. acts as a clearing-house of information regarding persons suspected of securities frauds, having files on over 35,000 such persons and providing periodical confidential releases as well as special services to state securities law enforcement authorities. Joint federal-state action in securities issuance and fraud matters occurs freely in some states, rarely in others. The S.E.C. is a member of both the National Association of Railroad and Utility Commissioners and the National Association of Securities Commissioners.

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diction; and (3) directed the federal agency to make available any information which "may be of assistance in state regulation," to loan members of its staff to states for service as witnesses, when they may be spared, and to use the services and facilities of state agencies where offered.[70]

These statutory provisions for "coöperation" with the states were implemented by a written agreement adopted unanimously by the National Association of Railroad and Utilities Commissioners and the Federal Power Commission in 1936. The agreement states their understanding of the terms of the statute with respect to federal-state collaboration and specifies procedures for undertaking joint action.[71] The tenor of the agreement is apparent from one of its statements:

"It is understood . . . that the Federal Power Commission or any State Commission will freely suggest coöperation with respect to any proceeding or matter affecting any public utility subject to the jurisdiction of said Federal Power Commission and of a State Commission, and concerning which it is believed that coöperation will be in the public interest."[72]

Joint action between the levels in the consideration and adoption of rules with respect to electric utility accounting, records, and reports has occurred freely. At the same convention which adopted the agreement with respect to procedure, the National Association of Railroad and Utilities Commissioners adopted a uniform system of utility accounting drafted in consultation with, and having terms in agreement with, the system adopted by the Federal Power Commission.[73] By 1937, twenty-one state commissions had adopted the association-approved system, and by 1938, twenty-seven had adopted it.[74] Consequent to these adoptions, the federal Commission was able to say, in the latter year, that, in consequence of the federal rules and the state adoptions, over ninety per cent of the electric industry—on the basis of assets and revenues—was then required to maintain uniform accounts.[75] Consultative adoption and promulgation of rules for electric utility property classification, for report forms, and for preservation by utilities of records have fol-

[70] 49 *Stat.* 853. [71] *Proceedings*, 1936, pp. 266–75.

[72] *Ibid.*, p. 269.

[73] *Ibid.*, pp. 49–56; Federal Power Commission, *Annual Report*, 1936, pp. 8–12.

[74] Only thirty-eight of the states had authority over private electric utility rates in 1935. Federal Power Commission, *Annual Report*, 1936, p. 22.

[75] *Ibid.*, 1937, p. 5; *ibid.*, 1938, pp. 3–4, 14.

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lowed from year to year, with the committee on statistics and accounts of the National Association, as well as the individual state commissions, consulting with the federal agency at all steps. Following the enactment of the Natural Gas Act in 1938, similar negotiations and agreements for uniform records for gas utilities began to take place.[76] It is indicated that information derived from the reports based on these jointly planned rulings passes freely from level to level for the use of regulatory authorities.[77]

Like the F.C.C.- and S.E.C.-prescribed accounting systems, the rules issued by the Power Commission call for the restatement of utility accounts upon an original cost basis. The Commission has created a field unit to verify original cost studies submitted by utilities. The Commission says that whenever possible its field agents collaborate with the staffs of the relevant state commissions in making these verifications.[78]

The elaborate statutory provisions for joint boards composed of representatives of the states to which formal cases might be assigned for original hearing have apparently gone unused. The joint hearing device in which representatives of the states sit with members of the federal Commission has, however, been used in several cases, especially since 1938, in both electricity and natural gas cases. In fiscal 1940, the state commissions of ten different states participated in such joint hearings. In additional cases, states and municipalities intervened in important cases before the federal agency to advocate their interests. Particularly in matters involving rates for natural gas service, state and local government agencies have joined forces with the federal Commission for comprehensive investigations of the rate structures and operations of the utility companies. Thirteen such investigations were completed during fiscal 1940 or were in progress at the close of the year. Upon some occasions, federal personnel has been loaned to state regulatory agencies.[79]

[76] *Ibid.*, 1939, pp. 18–19.

[77] By rule, within the authority of the federal act, the Commission is requiring annual reports—in a form arrived at by collaboration with representatives of the states—from each "private, municipal, and public corporation engaged in generating, transmitting, or distributing electricity," and having annual operating revenues of over $50,000. For state or local government utilities, this constitutes an interlevel reporting relationship. All reports cover approximately ninety-eight per cent of the electric utility industry, and are available to the state commissions, as are analyses compiled from them. *Ibid.*, 1938, pp. 11–12, 16–17.

[78] *Ibid.*, 1939, p. 20.

[79] *Ibid.*, 1940, pp. 11–12, 61–62, 64.

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SUMMARY

The associative activities between these regulatory bodies on the federal and state levels present several identifiable patterns. One of these is the written agreement stating conditions of collaboration which exist in all the cases described except the Securities and Exchange Commission. (The agreement among bank examiners is apparently more properly a statement promising uniform independent action than an agenda for joint action.) In a sense, these correspond to the state plans submitted and approved under the grant programs, but are different in that they are negotiated by the state officials collectively, through their Association, and in that they have no terminal date. Another distinction is that the agreements among the regulatory agencies do not establish an acting relationship. Rather, they state the conditions upon which and the procedures by which active relationship will be established.

Another of these patterns, related in part to the first, is that of the joint planning (or other consideration) of separate or joint action by the officials of the two levels through the device of the joint conference. This may occur as a meeting of federal officials with the representatives of a single state, of a group of states, or with a committee—selected through the official association—representing collectively large numbers or all of the states. The meetings of the official association are, in a practical sense, joint conferences, the officials of both levels having membership. The joint conference may consider a specific local situation and attempt to formulate a joint policy for its treatment, or it may propose a national uniform policy and procedure, as in the case of plans for the records which the regulated shall keep and report. Uniformity in accounting and other records had for some time been sought by interstate administrative agreements, but with only limited success.

A third pattern is that of the joint hearing in which representatives of a single state or a group of states, or state officials representing collectively a group or all of the states, sit with the federal commissioners in the administrative adjudication of a particular issue. In the determination of the federal issue, the state representatives are nominally acting in an advisory capacity, although practice has tended to institutionalize the understanding that the state representatives be heard fully and that, in case of disagreement, the position of the state representatives be given publicity. As originally conceived and used, this device was appropriate in cases in

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which the state had before it for hearing the intrastate aspect of the same case which the federal agency was hearing in its interstate aspect. Thus used, it involves the compilation of a joint record and the making of determinations in agreement, if possible. Obviously, in cases in which the state officials represent states collectively, they cannot make determinations in state cases, and the setting of a complementary state hearing has not been regarded as necessary to the successful use of the device, even when direct representation exists. In collective representation on these hearings, the provisions for constituting the state committee call for regional representation, regions coinciding with "rate areas" in railroad cases. Joint hearings have been used in railroad, telephone, telegraph, electric power, natural gas, and motor carrier matters.

Each of the above patterns of relationship, although present in some degree in the new agencies, went through its period of invention and partial development before 1933 in the I.C.C. railroad regulatory activities. The following patterns have had their incidence, or at least their prominent development in interlevel public service enterprise regulation during the last nine years.

The joint board device, authorized first in the Communications Act of 1934, but derived from drafts of the Motor Carrier Act, is the striking innovation of the decade in interlevel regulatory practice. The novel character of this pattern is the delegation—mandatory in some motor carrier matters—of original administrative adjudication to a board made up of state officials from the states concerned in the particular interstate commerce at issue. The Communications and Power Commissions have not yet used the device, but the I.C.C., in its motor carrier enforcement, for which the device was originally intended, has followed this pattern in hundreds of cases. Though inexperience with the device and the necessity for its immediate wide use have produced some complaint from both levels, there is no indication that it will, at the choice of the administrators, be discarded.

Not novel in interlevel administration, but used increasingly during the recent period, were various practices in the interlevel transmission of information. The S.E.C., F.C.C., and F.P.C. have made available their stores of information from the extensive reporting systems they have set in motion, from their analyses of reported data, and from their special studies. State commissions, on

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the other hand, have made available to the federal agencies files and briefs on state cases. In these activities, there seems to be the freest of interaction. In some degree, information with respect to specific instances in the form of complaints, or otherwise, passes in both directions freely. Loan of personnel, though in a limited degree, has also operated in both directions between the states and new regulatory agencies.

At least very significant portions of the interlevel collaboration anticipated in the enactments of the decade have been realized, though some of the provisions have not been effectuated. It is to be recalled from the early pages of this article that the statutory position of the states in the federal regulation of public service enterprises occurred in large measure as a result of demands of state administrators. It then becomes relevant to know the concepts which state administrators entertain as to their "position" in the administration of American utility regulation.

An uncommon view among state officials is that expressed by a relatively young commissioner, who, in a discussion of collaboration under the Communications Act, said:

"Now my thought is this, that no matter what we say here, and no matter what is said in the law, I will bet you dollars to doughnuts that before very many years pass by the state commissions will have only a small part of their present jurisdiction in the field of telephone regulation. . . . We are all tied together so closely in all of our dealings, in every phase of human conduct, that we are naturally coming more and more to realize the necessity of a more centralized control of those communication agencies which extend from one corner of this land to the other."[80]

And, to paraphrase his further remarks, "effective regulation" will require federal control.

It has been the tradition of the state commissioners to be jealous of their jurisdictions and fearful of the loss of segments of authority. The extreme form of this point of view, now less frequent than formerly, is found in the statement of a commissioner who was arguing with the president of the National Association for reconsideration of resolutions designed to facilitate interlevel action:

"I want to say not only to you but to the entire Association, I am not obstreperous, but I am obligated to myself, Mississippi, and God Almighty to try and get a little wider severance between states' rights and the Federal Government in things that appertain definitely and strictly

[80] National Association of Railroad and Utilities Commissioners, *Proceedings*, 1935, pp. 429, 430.

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to intrastate matters. And I just feel after it is all over that maybe I am voting to strengthen those chains that have been riveted upon us rather than striking them off."[81]

A third point of view, and one which apparently tends to gather adherents, is that of the commissioner who said, in referring to the tendencies in federal-state relations:

"The time has come when, if the states are going to be effective—I emphasize the word 'effective' —units of government, they not only have got to participate in these matters of regulation, but they have got to give the very best that they have to it. . . . If we are going to preserve the proper functions of the states, we have got to get into this thing in dead earnest. . . . We have got to meet judgment with judgment, experience with experience, skill with skill."[82]

The last commissioner doubtless expresses both the preference of the majority of state commissioners for continued significant participation in the procedures and some of the conditions for this continuance. Prediction as to this continuance should probably weigh heavily the accomplishments in interlevel associative administration during the decade, although keeping in mind the obstacles to successful state competition in the skill markets.

[81] *Ibid.*, 1938, p. 213. [82] *Ibid.*, 1935, p. 441.

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PARTY MEMBERSHIP IN THE UNITED STATES, II

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In spite of the recent loosening of the membership or affiliation requirements in Illinois and a few other states,[98] the general tendency throughout the development of party regulation has been toward greater strictness in this respect, toward more effective protection of the party organization against the independent voter with a careless party conscience. This is indicated, in the first place, by the turn toward an official definition and administration of these membership tests. That is, the parties are no longer left free to determine their own membership rules as they please, but these rules are to an increasing extent prescribed by state law and administered by state officials. Secondly, the tests of party membership have become, on the whole, more complex and more comprehensive, and therefore more difficult to evade—the closed primary has become more and more tightly closed. Thirdly, there has been a drift from the challenge to the enrollment or registration system, and, in general, legislation or other official action which requires greater care by the voter and the candidate in the selection of his party, and which imposes greater difficulty in changing his party affiliation.[99]

The increasing independence of party during recent years has brought with it serious problems for the party organizations, and legislative attempts, more or less successful, to deal with those problems in such a way as to protect especially the major party organizations and thus preserve the two-party system. In Minnesota, for example, a well-organized independent group which had as its program the principles of the Nonpartisan League, and which cared nothing at all for the Republican party, in 1920 filed a complete slate, headed by Dr. Henrik Shipstead for governor, for nom-

[98] During the period 1936–39, all tests of party affiliation were eliminated in Idaho, Michigan, North Dakota, and Utah, these states turning to the open primary. See Louise Overacker, in this REVIEW, Vol. 34, p. 501 (June, 1940).

[99] For a summary of these tendencies, see Margaret A. Schaffner, "Primary Elections; The Test of Party Affiliation," *Wisconsin Legislative Reference Department, Comparative Legislative Bulletin*, No. 13 (Aug., 1908); Miller McClintock, "Party Affiliation Tests in Primary Election Laws," in this REVIEW, Vol. 16, pp. 465–467 (Aug., 1922); and R. E. Manning, "Party Affiliation as Prerequisite for Voting at Primaries," *Library of Congress, Legislative Reference Service* (Dec. 13, 1932).

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ination in the Republican primary. Having been defeated in that primary, the same group thereupon filed as independents in the following election, thus revealing their own lack of any inherent loyalty to the Republican party and forcing the Republicans into a double contest. The narrow victory of the regular Republicans[100] taught them the necessity of protecting their party against invasion by such irregulars, and the next legislature enacted a provision forbidding any person who ran in a party primary from running independently in the following election.[101] This required candidates or groups with loose party convictions to decide before the primaries and once for all in any election year what they really were politically, whether members of a party or independents—they could not be both. The result in Minnesota was the organization of the Shipstead group into the Farmer-Labor party, and an abandonment of their previous efforts to "bore within" the Republican party and capitalize on its prestige with Minnesota voters.[102]

The Minnesota provision was adopted by other states,[103] and in various ways attempts have been made to meet the problem of the independents. In New York, the legislature in 1937 passed the so-called Berg bills, the salient provisions of which would have imposed severe restrictions on the operations of independents in that state by a drastic increase in the number of signatures required on independent petitions (for the 1938 elections, from 12,000 to 56,000 for state-wide offices, from 7,500 to 56,000 for city-wide offices), by limiting to three weeks the time during which independent petitions might be circulated, and by disqualifying party primary voters from signing such independent petitions. These bills, although vetoed by Governor Lehman,[104] were a significant

[100] J. A. O. Preus, the regular Republican, was nominated over Dr. Shipstead by a plurality of less than 13,000 in a total vote of 320,000, and elected over Shipstead by a plurality of about 130,000 in a total vote of nearly 800,000. *Minnesota Legislative Manual* (1921), pp. 100–101, 526 [insert]. The election would certainly have been much closer but for the Harding landslide of 1920.

[101] *Minnesota Election Laws* (1922 ed.), p. 60 [Sec. 371].

[102] From 1922 to 1938, this Farmer-Labor party was strikingly successful in Minnesota, controlling the state in whole or in part. It lost heavily in 1938, and in 1940 Senator Shipstead, elected three times previously as a Farmer-Laborite, abandoned that party and was reëlected as a Republican.

[103] Cf. Colorado law of 1927: "No person who has been defeated as a candidate in a primary election shall be eligible as a candidate for the same office in the next ensuing election." *Colorado Session Laws*, 1927, p. 325 [Sec. 5].

[104] Text of veto in *New York Times*, Apr. 28, 1937, p. 17.

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indication of the growing resentment against the very loose system in New York, and of the increased feeling that the party organizations needed protection against those who had no real interest in them.[105]

Another problem arises out of the occasional effort of independents to use in some way the name of an established party, presumably in order to confuse the voter and gain support. In Illinois, in 1926, in view of the widespread protest over the regular party nominations for the United States Senate—that of the notorious Frank L. Smith by the Republicans and of George L. Brennan, the Chicago boss, by the Democrats, a leading citizen of Illinois, Hugh S. Magill, announced his independent candidacy. Mr. Magill filed for a place on the ballot, however, under the designation of Independent Republican, and objections were made on behalf of the Republican State Committee. After a hearing, the state election board[106] unanimously ruled that the legally recognized political parties were "entitled under the law to the protection of the party name or designation chosen by such parties, and that a fair construction of the election laws of the state does not warrant the use of such established party designation, in whole or in part," by independent candidates. "We agree," said the board, "that such practice should not be employed." At the same time, the board refused to order Mr. Magill's name off the ballot, on the ground that on this occasion the objections had been made so late as to foreclose an opportunity for independents to file "under a proper and wholly distinct party appellation," and also on the ground that the publicity through these proceedings "has so fully advised the voters of the state that Republicans or Democrats will not on this particular occasion be confused or misled by the appellation adopted, but, on the contrary, will find no difficulty in casting their ballots for the regular nominees of their respective parties. . . ."[107]

[105] In 1930, a bill was introduced in the New York legislature which would have required a member of one party seeking the nomination of another party to secure twice the usual number of signatures to his petition ("twice the number of enrolled voters of the party involved"), and to file a statement of his affiliation with a party other than that whose nomination he was seeking. *New York Times*, Feb. 15, 1930.

[106] Composed of Secretary of State Louis L. Emmerson, Attorney-General Oscar Carlstrom, and State Auditor Oscar Nelson, all Republicans.

[107] Text of opinion in *Chicago Tribune*, Oct. 20, 1926, p. 1, c. 1. This ruling applied also to the candidacy of James H. Kirby, who similarly filed as an Independent

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A somewhat similar situation arose in the same year in New York, in that a former state senator and a "dry," Franklin W. Cristman, because of the nomination of "wets" by both major parties, filed as an independent candidate for the United States Senate, but under the designation of Independent Republican. The Republican State Committee protested Mr. Cristman's use of the word Republican, pointing out the confusion likely to result in the minds of many voters and emphasizing that if the precedent were established in this case, some one later might go still farther and use such a combination as Regular Republican or Regular Democrat. The Secretary of State, Mrs. Florence Knapp, as the responsible election official in New York, ruled that Mr. Cristman might not use the word Republican, but that he might use an abbreviated form, and hence his candidacy appeared under the designation "Independent Rep."[108]

In 1938, another particularly complex case of confused party membership arose in New York in that Congressman John J. O'Connor, for some time a leading Democratic Representative in Congress and at the time chairman of the powerful House Committee on Rules, was "purged" by President Roosevelt and defeated for the nomination in the Democratic primary, but was nominated by the Republicans and by an independent "Andrew Jackson party." During the campaign, however, Mr. O'Connor circulated literature referring to himself as a Democrat, and this his Democratic opponent, Mr. James H. Fay, sought to enjoin, apparently basing his suit on a provision incorporated into the New York law after the Cristman incident, prohibiting independent candidates from running under the name of any recognized political party in whole or in part.[109] The court held, in a somewhat ambiguous opinion, that the law had the "laudable purpose of not confusing the voter," and that Mr. O'Connor might not use the word "Democratic" in his campaign literature, but that he could not be prevented from writing to his constituents and informing

Democrat, but whose candidacy was less important than that of Mr. Magill in view of the dominance of the Republican party in Illinois at that time.

[108] *New York Times*, Oct. 10, 1926. Mrs. Knapp apparently based her ruling in part on a statutory provision which permitted the use of an abbreviated party name on the ballot, but such use was permitted only if the full party name contained more than fifteen letters, and provided the abbreviated form contained not more than eleven letters. *New York Election Law* (1922), sec. 20.

[109] See *New York Election Law* (1941), sec. 137, par. 3.

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them that he still considered himself a Democrat and a member of the Democratic party.[110]

Many other incidents could be mentioned that have resulted in party practices, administrative rulings, judicial decisions, and legislation dealing with the problem of the invasion and use of a party organization by persons not genuinely its members nor interested in its welfare. These have varied considerably in detail, but in general the tendency has been toward the principle stated most clearly in the Montana statute: ". . . Every political party and its regularly nominated candidate, members, and officers, shall have the sole and exclusive right to the use of the party name and the whole thereof, and no candidate for office shall be permitted to use any word of the name of any other political party or organization than that of and by which he is nominated. No independent or non-partisan candidate shall be permitted to use any word of the name of any existing political party or organization in his candidacy. The names of candidates for public office nominated under the provisions of this law shall be printed on the official ballots for the ensuing elections as the only candidates of the respective political parties for such public offices in like manner as the names of the candidates nominated by other methods are required to be printed on such official ballots."[111]

In view of the loose rules with respect to membership in the major parties, and the failure to distinguish clearly between loyal membership and mere voting affiliation, the strength in actual membership of these major parties cannot be accurately determined and becomes very difficult even to estimate. Such an estimate might be based, in the first place, on active work for the party. As a keen observer of American politics has pointed out, "there is no such thing as a political census or registry,"[112] but nevertheless various estimates have been made of the number of active party workers. James Bryce made an early estimate of

[110] *New York Times*, Nov. 5, 1938, p. 6, c. 7.

[111] *Election Laws of Montana* (1940 ed.), p. 48 [sec. 639]. In 1940, 39 states required candidates to be members of the party whose nomination was sought, and in only five states (California, Maine, New York, Vermont, and Massachusetts for certain offices) might candidates run under more than one party (or non-party) designation. See Arthur Harris and Carl Uhr, "Direct Primary Elections," University of California, Bureau of Public Administration, *1941 Legislative Problems*, No. 3 (March 31, 1941), esp. Table I.

[112] Frank R. Kent, *Political Behavior*, p. 7.

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500,000 for all parties, divided about equally between the Inner Circle, "the persons who make political work the chief business of life, for the time being," and the Outer Circle, "men engaged in some trade or profession who interest themselves in politics and work for their party without any definite hope of office or other pecuniary aim;"[113] and Ostrogorski, in his classic comparison of our party organization to a military system, estimated the "regular army" to consist of from 800,000 to 900,000 men (members of local committees) and about 50,000 officers (members of higher committees), to which might be added the "volunteer forces" of 1,500,000 or 2,000,000 voters enrolling in campaign clubs, thus making up "the enormous total" of 3,500,000 to 4,000,000, or "one militant, entering heart and soul into the fray, to every four or five electors."[114]

That Ostrogorski's, and even Bryce's, estimates may have been unduly optimistic as to the extent of party interest and activity is suggested by the estimate of 500,000 made by Frank R. Kent for 1928; and this figure, said Kent, "includes not only all the workers in the political machines but all the office-holders, county, city, state and federal, and all the interested attachés, leaders, bosses, sub-bosses, contributors, observers, factors, and influences, overt and covert. This leaves approximately 119,000,000 people to whom politics is practically a closed book."[115] And more recently other competent observers have estimated the usual number of party workers at six per precinct, or about 800,000 for all parties, but which "in times of great excitement and enthusiasm" might be doubled, reaching a total of "over 1,500,000 active partisans occupied with the task of carrying on the campaign of the party."[116]

In estimating the strength of particular parties, one writer points out the misconception involved in the statement that "the Democratic party was strong in 1896," since such a statement evidently has reference to the 6,000,000 who voted for Bryan, whereas, in spite of its being a crusading year, with an unusually active

[113] See Bryce's interesting and suggestive discussion in *American Commonwealth* (rev. ed., 1916), Vol. II, ch. 57, "The Politicians," esp. pp. 62–68.

[114] Ostrogorski, *Democracy and the Organization of Political Parties* (1902), Vol. II, pp. 285, 292. In a later edition of this volume, the figures as to the number of party workers were increased, but the ratio of one party worker to every four or five voters was maintained. *Democracy and the Party System* (1910), pp. 165, 170.

[115] Kent, *Political Behavior* (1928), pp. 7–8.

[116] Merriam and Gosnell, *The American Party System* (3rd ed., 1940), p. 146.

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campaign by the Democrats, there was a maximum of a million, or one in six, who "were members of a party organization of any kind." "As a matter of fact," he says, "fifteen or twenty thousand men were members of party committees in that campaign, another ten thousand men took active part in the campaign, and it is estimated that one hundred thousand contributed money and voluntary effort." The same writer estimates that in 1920 the Republican and Democratic presidential candidates were nominated by delegates who represented "altogether perhaps five hundred thousand persons who, because of leisure, money, or interest, had selected one or the other of the two dominant parties as the agency through which to accomplish their desires in government."[117]

It may be significant that responsible party officials are inclined to make even more modest claims with respect to the number of active party workers. Thus, Mr. Homer Cummings, in his report as chairman to the Democratic National Committee on February 26, 1919, stated that after organized efforts had been made to secure active workers for the congressional campaign of 1918, it was possible to compile a list of 47,372 "active Democratic workers" in twenty states, running from 384 in Arizona to 8,170 in Missouri.[118] On this basis, and in spite of the difficulties intimated by Chairman Cummings in securing workers in the other states, probably 100,000 would be a fair estimate for the total number of Democratic workers in the period 1918–20. Such a competent party official as Democratic National Chairman James A. Farley, drawing upon his extraordinarily wide acquaintance with Democratic organizations and workers throughout the country, has also made only very modest claims with respect to the number of active Democrats. "There are more than 150,000 loyal men and women in this country," he wrote, evidently referring to the campaign of 1936, "who are connected with regular Democratic organizations, ranging from 'bigwigs' like national and state committeemen, down through precinct and district captains and canvassers to the local committee workers and other humble folk who pull the doorbells, distribute the literature, and haul the voters to the polls on election day." In other words, fewer than one in two hundred of those who voted the Democratic ticket in 1936 were considered by Chairman

[117] Robinson, *The Evolution of American Political Parties*, pp. 4–5.

[118] Minutes of Democratic National Committee, in *Official Proceedings, Democratic National Convention, 1920*, Appendix, pp. 476–477.

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Farley to be active and loyal Democrats willing to do any work for the party. It may not be surprising that he added this note of warning: "An army is seldom stronger than its infantry forces, and a political army is never stronger than its corps of workers."[119]

If all this seems to suggest that there is little relation, so far as the major parties are concerned, between active work for the party and membership in or voting support of the party,[119a] it may be pointed out that there is at least a beginning of legislation which does suggest the appropriateness of establishing such a relationship. Thus a New Jersey law of 1930 makes party activity both a positive and a negative criterion of party membership by providing that a member of a party committee or a person elected or appointed "as a member of a political party" to any public office or employment, "shall be deemed a member of such political party;" and that membership in any political organization espousing the candidates of any political party makes these persons members of that particular political party and ineligible to participate in the primary of another party during such activity and for a year thereafter.[120]

An estimate of party membership might be based, in the second place, on contributions. That is, it might be assumed that any person who considers himself a member of the Republican or Democratic party would be willing to contribute something to its support, as a member of any other organization usually expects to contribute something to advance the interests of that organization; and, similarly, it might be assumed that a person who does not contribute at all to the financial support of a political party hardly deserves to be considered a member in good standing.[120a]

[119] Farley, *Behind the Ballots*, p. 193.

[119a] Compare the attitude of minor parties on this point, illustrated by the following: "It is not enough to be a Socialist in sentiment; one must be a Socialist in action. . . . Each party member is expected to carry on Socialist work in whatever organization he finds himself." Roy E. Burt, Executive Secretary of Socialist Party, in *Socialist Handbook* (1937), pp. 9, 11.

[120] *New Jersey Election Law* (ed. 1939), pp. 88–89 [Title 19, ch. 23, sec. 45].

[120a] "May I just say to you, gentlemen, that there are practically 300,000 paying members of your party in the United States today. There is hardly a township in the country where we have not a member anxious to help do the work necessary in a campaign, to the extent not only of giving his time, but in giving evidence of that by having sent you his money. There is a live list on the cards that you can go to at any time and find there is a Democrat in that particular locality who wants to contribute to such an extent that he has already given his money, and you know

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This theory of a relation between contributions and membership is a thoroughly accepted feature of minor party organization in the United States. Thus the Socialist party has in its constitution a provision for the regular payment of dues by its members, nonpayment to result in automatic expulsion from the party;[121] and similar provisions are generally found in the constitutions or rules of the other minor parties.[122] The active and loyal membership of these minor parties can therefore be quite accurately determined on the basis of the extent to which the regular dues are paid. The reports of the American Labor party show, for example, that in 1936 more than 320,000 persons in New York State contributed an average of twenty-six cents each to the campaign fund of that party, that no individual contribution exceeded $250, and that the largest source of the party's income was membership fees of fifty cents each for 55,617 individual members, and ten cents each for 240,686 members, of affiliated organizations. The party membership of 296,303 thus indicated corresponded very closely to the party vote of 274,924 cast at the election.[123]

The major parties have not, however, developed any system of dues from their members, but have relied principally on voluntary contributions. If such contributions were taken as a criterion of active membership, the results would show that in 1920—the Republican landslide year—there were only 4,429 Republicans in Missouri, 2,115 in Michigan, 440 in New York, and 91 in Ohio; at the same time, there were 352 Democrats in Ohio and in 1922 about 17,000 in New York.[124] According to the best estimates, the number

he is there with his heart also." Statement of Treasurer Wilbur Marsh to Democratic National Committee, Feb. 26, 1919. *Proceedings, Democratic National Convention, 1920,* Appendix, p. 470.

[121] Under the party's 1920 constitution, for example, the dues were fixed at not less than $1.50 a quarter, distributed in certain proportions to the national, state, and local organizations. More recently, changes were made in the amounts and methods of assessment. *Socialist Party Constitution* (1920), Art. II, sec. 6, Art. IV, sec. 10, Art. IX, secs. 6–7 (leaflet copy); *ibid.* (revised 1937), Art. XI, in *Socialist Handbook* (1937), pp. 74–75.

[122] Socialist Labor Party Constitution (1920), Art. VIII, in *Reports of National Convention of Socialist Labor Party, 1920,* p. 17; Articles of Association of the Nonpartisan League, sec. 10, in Howard, *The Leaders of the Nonpartisan League,* pp. 54–55; Resumé of State By-Laws and Rules of American Labor Party, in *American Labor Party Handbook* (1937), p. 19.

[123] See summary of the party's financial report in *New York Times,* Oct. 26, 1936, p. 6, cc. 1–2; and election statistics in *New York Red Book* (1940), p. 547.

[124] Pollock, *Party Campaign Funds,* pp. 76, 81.

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of Republicans who contributed any money at all directly to the national treasury of their party was 2,600 in 1912, 34,205 in 1916, 50,777 in 1920, 90,227 in 1924, 143,749 in 1928, 39,950 in 1932, 84,770 in 1936, and 39,169 in 1940. Similarly, there were, on this basis, 90,500 national paying Democrats in 1928, 26,581 in 1932, 54,818 in 1936, and 37,998 in 1940.[125] Other estimates have placed the total number of paying Democrats as high as 200,000 in 1916, 300,000 in 1918–19, and 600,000 in 1936,[126] and of paying Republicans as high as 600,000 in 1936, and even more in 1940.[127]

Although these figures make it apparent that there has not been for the major parties any significant relationship between membership and contributions, it is important to note that there is in the leadership of these parties a growing appreciation of the desirability of such a relationship. That must have been to some extent in Mr. Bryan's mind when he initiated, in 1908, the so-called Dollar Campaign, urging that the rank and file of Democrats be asked to pay a dollar, and only a dollar, toward the expenses of the campaign, rather than that large contributions from a small number be sought.[127a] By 1932, even the Republicans, who theretofore had

[125] These figures are compiled by Louise Overacker in her excellent studies, "Campaign Funds in a Depression Year," in this REVIEW, Vol. 27, pp. 769–783 (Oct., 1933), esp. pp. 772–773; "Campaign Funds in the Presidential Election of 1936," *ibid.*, Vol. 31, pp. 473–498 (June, 1937), esp. pp. 481–482; "Campaign Funds in the Presidential Election of 1940," *ibid.*, Vol. 35, pp. 701–727 (Aug., 1941), esp. pp. 717–718. The figures are admittedly incomplete since they include only contributors to the respective National Committees, and not to state organizations nor to such national organizations as the Roosevelt Nominators in 1936 or the Willkie Clubs in 1940.

[126] Pollock, *op. cit.*, pp. 68, 70. See also report of Wilbur Marsh, Treasurer of the Democratic National Committee, Feb. 26, 1919, in *Official Proceedings, Democratic National Convention*, 1920, p. 740; and Louise Overacker, *op. cit.*, Vol. 31, p. 482 (June, 1937). Miss Overacker's figure of 600,000 includes 350,000 Democrats who attended Jackson Day dinners.

[127] Statement (for 1936) by Ernest T. Weir, chairman of Republican Finance Committee, Mar. 16, 1940, in *New York Herald-Tribune*, Mar. 17, 1940, Sec. 1, p. 15, c. 1. John Hamilton, then chairman of the Republican National Committee, stated that there were 607,000 Republican contributors in 1936, and added that there was "no reason in 1940 why there should not be 1,000,000." Quoted in *New York Times*, May 2, 1939, p. 24, c. 3. Miss Overacker makes no estimate with respect to the Republican total in 1940, but does say: "It is not unlikely that more voters contributed to Willkie's campaign than to that of any Republican candidate in history." *Op. cit.*, Vol. 35, pp. 717–718 (Aug., 1941).

[127a] Compare the statement of National Committeeman Arthur F. Mullen (Neb.) to Democratic National Committee, Feb. 26, 1919: "Now, Mr. Jamieson (Assistant Treasurer) has collected the campaign funds . . . and he has collected that money

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generally appealed for financial support to a limited number of wealthy persons, organized a so-called "Small-Contributions Drive,"[128] which by 1939 became in New York State even a Penny Drive, the purpose of which was probably as much to interest a large number of people in the party as actually to raise money.[129]

In 1937, the Republican National Chairman boasted about the increased number of contributors, especially of small contributors, to the party treasury, obviously thinking of its importance in respect to the active interest in and loyalty to the party associated with a convinced and more or less permanent membership. "It is most encouraging to us at headquarters," he said, "and it should be a source of gratification to all members of the Republican party, that persons of small means in increasing numbers, and very frequently, as their letters show, with very real sacrifice, are expressing through their contributions their faith in the beliefs and activities of the party."[130] Chairman John Hamilton, in voicing his optimistic expectation of 1,000,000 paying Republicans in 1940, said: "That

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from the rank and file of the Democrats of the country, and that is the place to collect campaign funds. From personal experience, in the state in which I live, I would rather have each man pay a dollar apiece than have one man pay $100, because there is a certain amount of psychology in the matter of contributions. The individual man putting in his dollar instantly has an interest in the matter. The policy of Mr. Jamieson during the last three years has been a policy not only of collecting funds, but of collecting a general organization. He knows the men who have sufficient interest in politics and he gets their names in the various parts of the country, and they contribute money to support the party. Those are the men who will do the work." *Proceedings Democratic National Convention, 1920*, Appendix, p. 469.

[128] See *New York Times*, Sept. 18, 1932, sec. 1, p. 28, c. 4.

[129] The plan, initiated by the New York State Republican Women, Inc., was to distribute 80,000 miniature elephant banks, into which "millions of pennies" would be dropped for the 1940 campaign fund. *New York Times*, Mar. 7, 1939, p. 2, c. 2. Cf. editorial comment: "It may be suspected that this call for cents is also a bit of political strategy. In their days of adversity, the Democrats never admitted that the Golden Calf was sound veal. For them no purple feasts. They were plain people, hating pomp and foreign kickshaws. Austere Jeffersonian Democrats have noted with pain that in power Democrats eat and drink like the Republican minions of the Money Power. Now the Republicans are the plain people. They look sadly at the high price of Democratic banquets. They deplore the raising of money to pay campaign debts by dinners at fifty or one hundred dollars a head. Beef and beans for the Republicans. Leave to the soft campanian Democrat his terrapin and his wine. So the Penny Drive is a reproach to the plutocrats in the other tent." *Ibid.*, Mar. 9, 1939.

[130] Statement by William R. Castle, Acting Chairman, in *New York Times*, June 9, 1937, p. 6, c. 4.

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will be the greatest force to destroy the political propaganda that we are a party of economic royalists";[131] and Mr. Willkie, in thanking a New York committee for its success in 1940 in gathering 153,000 contributions from the eight metropolitan counties—five times more than on any previous occasion—said: "You already have proved that the Republican party is the party of the people."[132]

As a matter of fact, responsible leaders of the Republican party have in recent years taken definite steps to establish something like a permanent membership list for the party and to put such membership on a regular dues-paying basis. Thus, with the re-election of Chairman John Hamilton after the disastrous campaign of 1936 and the immediate need of paying off the deficit of over $900,000 resulting from that campaign, it was proposed that the new finance committee should set up a system of "sustaining members" on a four-year basis, that is, members who would "pledge themselves to subscribe so much a year over a period of four years." This would, it was agreed, "assure sufficient money to run the affairs of the party between campaigns," and also tend to emphasize the character of the party as a party of the "masses" rather than of the "extremely wealthy."[133]

Within a year, such a system of dues-paying membership was set up by the national organization, and appeals were made to party leaders throughout the country to secure the members necessary to make the system effective, Mr. C. B. Goodspeed, the national

[131] Quoted in *New York Times*, May 2, 1939, p. 24, c. 3. Mr. Ernest T. Weir, then chairman of the Republican Finance Committee, also referred to the tendency within the party toward broadening the base of its financial support as a "healthy situation and one that should prevail," declared that he would make every effort "to continue and further this trend," and therefore not only welcomed any contribution, "whether the contribution be $5,000, $20, $10, or even $1," but also accepted for the Republican party the proposed Bankhead amendment to the Hatch Act limiting individual contributions to $5,000. *New York Herald-Tribune*, Mar. 17, 1940, sec. 1, p. 15, c. 1.

[132] *New York Times*, Nov. 3, 1940, sec. 1, p. 41, c. 1. For the general trend in both parties with respect to the number of contributors, see the articles by Louise Overacker, previously cited. With respect to 1940, she concludes that "the Democratic party has returned to its Jeffersonian tradition and is once again the party of 'the little fellow'. In contrast to this, the small contributor played a less important rôle in the Republican party in 1940 than in 1936." See this REVIEW, Vol. 35, pp. 716–717 (Aug., 1941).

[133] Charles R. Michael, in *New York Times*, Dec. 19, 1936, p. 9, c. 1; and Arthur Evans, in *Chicago Tribune*, Dec. 19, 1936, p. 13, c. 3.

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Treasurer, issuing the following explanation of the plan:

"To enable the Republican national committee and the national Republican congressional committee to carry out a continuous program and to bring about the participation of lay Republicans in the work of the party, the following plan of financing has been adopted. State finance committees are to be organized in the various states to obtain the largest possible number of sustaining members of the Republican party, contributing annually to the support of their political party as they do to their religious, charitable, and fraternal organizations. A national finance committee is to be formed, comprised of the chairmen of the various state finance committees. It is contemplated that this committee will hold regular meetings and keep continuously informed of the work of the national committee, so that they in turn can report to the members of the state committees. In this way the lay members of the party will be brought into closer coöperation with the political organization and participate in the work. It is believed that if a systematic campaign is carried on continuously to build up a sustaining membership, sufficient income can be provided to meet the operating expenses of the national and congressional committees, liquidate the deficit of 1937, finance the congressional campaign in 1938, and, during 1938 and 1940, accumulate funds for the next presidential campaign."[134]

There is also some legislation incorporating, at least by inference, this principle of a relationship between party membership and party contributions. The New York statutes have for thirty years (since 1911) included a provision authorizing each party committee to "prepare rules for the government of the party within its political subdivision, which may include provisions for the payment of dues, and that failure to pay them shall be cause for removal by the committee."[135] In New Jersey, the legislature of 1930, although not yet requiring dues or contributions from party members, did make contributions a test of party membership by providing that "any voter who, within one year preceding any primary election, has contributed toward the campaign funds of a political party, shall not be eligible to vote in the ballot box of any other political party at such primary election."[136] With this beginning, it

[134] *Chicago Tribune*, Aug. 12, 1937, p. 7, c. 1. This plan was formally adopted by the Republican National Committee on Nov. 5, 1937, and Senator Hastings (Del.) was quoted as stating that it should bring in from $3,000,000 to $5,000,000. See accounts in *Chicago Tribune*, Nov. 6, 1937, p. 12, c. 1; and *New York Times*, Nov. 6, 1937, p. 4, c. 8.

[135] *Laws of New York* (1911), Vol. 3, p. 2680 [ch. 891, art. 3, sec. 38]; cf. *New York Election Law* (1941), p. 5 [sec. 15]. The provision has remained substantially the same, with only a slight change in phraseology in 1916.

[136] *New Jersey Election Law* (1936), p. 143 [Art. XXII, par. 310, sec. 45]. This repeats the provision of 1930.

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seems altogether likely that further legislation along this line may be expected in the future.

A third, and probably the most accurate basis, for estimating the actual membership of the major parties is the party enrollment or registration, where such enrollment or registration is provided for. Attention has already been called to the increasing use, in connection with the party primaries, of the enrollment system as a means of determining the party affiliation of the voter and his consequent right to vote in a particular party primary.[137] This enrollment system, used in some form by more than twenty states, requires the voter, before the primary or election, to register his party preference or affiliation, this registration becoming a matter of public record.[138]

Such an enrollment clearly seems to most voters a much more solemn and responsible commitment to a political party than does the alternative method of an oral declaration at the primary (especially since in practice this declaration is frequently not called for), or merely voting with a particular party at an election, and hence is likely to be taken much more seriously and to represent more accurately the voter's real party convictions.[139] The National Secretary of the Socialist party, Mr. Travers Clement, in his report for 1940, pointed out that "the usual method of determining the numerical strength or weakness of an American political party . . . is the use of registration figures"; and that while this was the gauge used particularly for the Republican and Democratic parties and was not the Socialist idea of "enrolled membership,"

[137] See this *Review*, Vol. 36, pp. 30–31 (Feb., 1942).

[138] A typical party enrollment system is that of Pennsylvania, where the statutes provide that the regular registration held at stated periods before the spring primary and before the general and municipal elections is to include a designation of the voter's political party; permits this party enrollment to be challenged, in which case the voter must take an oath that he voted at the last election for a majority of the candidates of the party with which he desires to enroll; provides a method of cancelling and changing the party enrollment; allows an enrolled party member to vote at the primary of his party without challenge, but expressly forbids him to participate in the primary of any other political party. See New Registration Laws of 1937 (revised and adapted to permanent registration), in *Pennsylvania Manual*, Vol. 37 (1937), pp. 339–407. For comparison, see Connecticut law of 1909, in *Republican Handbook of Connecticut, 1916*, pp. 187–202; and *New York Election Law* (1941 ed.), pp. 116–129 [esp. secs. 171–172, 183–184.]

[139] This is suggested by the pertinent, even though facetious, remark of a prominent professor of law: "I have often voted for Democrats, but I have never sunk so low as to register with the Democrats."

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nevertheless "most citizens who register Socialist consider themselves automatically members of the Socialist party."[140] Similarly, it may be said that most citizens who register Republican or Democratic actually do consider themselves Republicans or Democrats, respectively, whereas it has been amply demonstrated that voting a party ticket, or even holding office under a party administration, is no such indication of party membership. Thus, Secretary of the Interior Harold Ickes, after having served for four years in the cabinet of a Democratic President, and after having accepted designation as a delegate to the Democratic National Convention of 1936, apparently still did not consider himself a Democrat, for, in reply to a question on the point, he said: "I'm going as the individual that I am here [in the cabinet]. I didn't have to declare myself a Democrat for that."[141] Similarly, Secretary of Agriculture Henry A. Wallace, a registered Iowa Republican when appointed to the Roosevelt cabinet in 1933, although he was reported to have voted Democratic since 1928, did not formally change his party membership until the spring of 1936, when he signed the papers required by the Iowa law and became a Democrat in name as well as "a Democrat in feeling."[142] This recent conversion of Secretary Wallace to Democracy undoubtedly contributed to the reluctance of the Democratic leaders to accept him as their vice-presidential candidate in 1940.[143]

[140] See *Report to the Socialist National Convention, 1940* [mimeographed copy], p. 3.

[141] During the preliminary discussions concerning the Illinois delegation to the Democratic National Convention, the question was raised "whether Ickes, who has been a Republican and a Bull Mooser, had joined the Democratic party," and it was pretty clear that the Democratic leaders in Illinois agreed to his selection only because it was particularly requested by Sen. James Hamilton Lewis. *Chicago Tribune*, May 1, 1936, p. 4, c. 1; May 2, p. 6, cc. 2–3; May 6, p. 4, c. 2.

[142] Wallace's right to serve as a delegate to the Democratic National Convention of 1936 was seriously questioned by Iowa Democrats in view of his Republican enrollment, and he was not chosen as a delegate; he changed his party after the delegates were selected. *Chicago Tribune*, Apr. 3, 1936, p. 10, c. 3; Apr. 28, p. 5, c. 2. (Facsimile of Wallace's change of party affiliation in latter issue.)

[143] "I appear here to second the nomination of a *real* Democrat, and to tell you, my friends, we want to carry the ticket in November down in Missouri, and we can't do it with a Republican running for Vice-President of the United States. (Applause and cheers.) . . . Let the world know that this is a convention where we voted for President Roosevelt and drafted him because as thinking men and women we wanted him for President of the United States. Let us show the United States and the world that as thinking men and women we want a Democrat to run with a Democrat in November. (Applause and cheers.) . . . " J. V. Conran (Mo.), seconding the

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The party enrollment figures, where these are available, are quite revealing of the party situation. Those for New York, for example, show that state to have been essentially a Republican state until 1932, although frequently electing Democrats to office and continuously electing Democratic governors since 1922.[144] These figures show that thousands of voters who were willing on occasion to vote the Democratic ticket, in whole or in part, did not

TABLE II
COMPARISON OF MAJOR PARTY ENROLLMENT AND GUBERNATORIAL VOTE IN NEW YORK

Year	Republican		Democratic		Excess of Enrollment	Excess of Vote
	Enrollment	Election	Enrollment	Election		
1920	1,763,504	1,335,878	922,170	1,261,812	Rep. 841,334	Rep. 74,066
1922	1,267,436	1,011,725	1,130,944	1,397,670	Rep. 136,492	Dem. 385,945
1924	1,773,051	1,518,552	1,284,407	1,627,111	Rep. 488,644	Dem. 108,557
1926	1,483,780	1,276,137	1,344,574	1,523,813	Rep. 139,206	Dem. 247,676
1928	2,176,009	2,104,629	1,950,781	2,130,193	Rep. 225,228	Dem. 25,566
1930	1,552,153	1,045,341	1,544,740	1,770,342	Rep. 7,413	Dem. 725,001
1932	2,012,999	1,937,963	2,413,699	2,534,959	Dem. 400,700	Dem. 847,439
1934	1,521,417	1,393,638	2,256,107	2,201,729	Dem. 734,690	Dem. 808,091
1936	2,037,344	2,180,670	3,266,748	3,018,298	Dem. 1,229,404	Dem. 837,628
1938	1,930,858	2,302,505	2,442,142	1,971,307	Dem. 511,284	Rep. 331,198
1940	2,647,148	3,027,478†	3,191,387	2,834,500†	Dem. 544,239	Rep. 192,978*

† No governor elected in 1940, hence the presidential vote is given.
* See note 145.

thereby consider themselves Democrats at all, but continued to enroll as Republicans. Thus, in 1920 the number of enrolled Republicans was nearly two million and exceeded the Democrats by nearly 850,000; but at the same time the Republican candidate for Governor (Nathan L. Miller) polled a vote below that of the party enrollment by more than 300,000. The Republican party in New York reached its peak of enrolled membership in 1940, with well over two and a half million registered members, but meanwhile the Democratic party had since 1920 increased by leaps and bounds, by 1928 had reduced its inferiority to about 225,000, became in 1930

nomination of Speaker Bankhead, in *Proceedings, Democratic National Convention, 1940*, p. 228. Cf. seconding speeches of John H. Morehead (Neb.), Francis W. Durbin (O.), and Maury Hughes (Tex.), in *ibid.*, pp. 229, 232–233.

[144] See Table II below. New York has had a party enrollment system for more than forty years (since 1898). The party enrollment figures, published regularly since 1920 and occasionally before that, are found in *N.Y. Legislative Manual* and *N. Y. Red Book* for the respective years. For the earliest and most recent statutes, see *Laws of New York, 1898*, Vol. 1, pp. 331–359 (ch. 179, esp. secs. 3, 11); *N. Y. Election Law* (ed. 1941), pp. 90–135 (Art. 7, esp. secs. 171–172, 183–184).

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virtually equal, and since 1932 has been the majority party in membership, enrolling in 1936 more than three and a quarter million members and exceeding the Republicans in that year by nearly a million and a quarter. Since 1936, the Republicans have regained votes, and on that basis they became the majority party in 1938 and 1940.[145] But the Democrats remain the dominant party in strength by more than half a million, with the indications for the future not so clear.

A more detailed examination of the party enrollment since 1920 shows that this shift in party strength was particularly notable in New York City, where the number of enrolled Republicans decreased from a peak of 643,630 in 1920 to a low of 320,075 in 1934, and again increased to a new high of 758,385 in 1940; while the number of enrolled Democrats increased from its low point of 531,167 to a peak of 2,289,213 in 1936 and to 2,273,367 in 1940. It further shows that although the Democrats have since 1920 quite consistently gained party members throughout the state, their vote is generally considerably in excess of their party enrollment, while the reverse is commonly true of the Republicans.[146] In other words, voters who were in large numbers dissatisfied with Republican candidates and prepared to vote the Democratic ticket still considered themselves Republicans, enrolled accordingly, and should be considered as Republicans in spite of their Democratic vote.[147] It may be added that, while New York Republicans have been ready to bolt their party on the governorship in particular, Democrats have been inclined to bolt on the presidency.[148] But, at

[145] The Republican vote exceeded the Democratic vote by 331,198 in 1938 and by 192,978 in 1940; Governor Lehman and President Roosevelt carried the state only because of the American Labor vote of 419,979 and 417,418 in those respective years.

[146] An analysis of the period 1920–26 shows that in 1922 the Republican enrollment exceeded the Republican vote for governor in only one of the 62 counties in the state, and never during these years in more than 26; while the Democratic enrollment was in 1922 below its gubernatorial vote in 61 counties, and was never below in less than 53. *N. Y. Red Book, 1928*, pp. 375–378.

[147] Note this pertinent comment on the party enrollment for 1926: "These figures show that the State in 1926 was Republican by a majority of 139,226. If they are an index of party strength, they indicate that Governor Smith must have received in the election that year about 200,000 votes of Republicans and independents. . . . " *Ibid.*, p. 366.

[148] Even the popular Governor Smith, as the presidential candidate in 1928, "showed surprising weakness, measured by enrollment, in all five counties of New York City." *Ibid., 1930*, p. 421.

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any rate, loyalty to the party has in New York been firmer than loyalty to the ticket, and it is this loyalty to the party which, to the extent that it can be determined, should be taken as the measure of party membership and strength.

In other states having party enrollment systems, the enrollment figures similarly show the distinction between membership in a party and voting a party ticket, and the greater hesitancy of the voters to leave their party than to abandon its leading candidates. In Pennsylvania, long the bulwark of the Republican party, the Republicans have maintained their lead in enrolled membership throughout the course of the New Deal, although losing the principal offices in 1934, 1936, and 1938. In 1934, about 90,000, and in 1936 nearly 300,000, more Pennsylvanians voted the Democratic ticket than were enrolled members of the Democratic party, and if attendance on the party primary were considered the criterion of party attachment, the discrepancy would be considerably greater.[149] On the other hand, the figures show that Pennsylvania voters did in large numbers, but more gradually than in New York, change their party conviction and party membership, so that the Democrats steadily increased their enrollment from 657,329 in 1926 to 2,209,276 in 1938, or an increase of more than a million and a half, while during the same period the Republicans increased their enrollment by less than 100,000. From a state overwhelmingly dominated by a single party, Pennsylvania slowly but steadily has become a genuine two-party state, which is probably much more representative than before of the political differences among the

[149] For the party enrollments, as well as the primary and election vote, see *Pennsylvania Manual* for the respective years. The enrollment for the major parties only, during the period 1925–37, is found in the *Manual*, Vol. 83 (1937), p. 166. Cf. following comment with respect to the situation in 1933: "Democrats here [Pittsburgh] and in many other parts of the State feel that a fundamental change has begun in Pennsylvania; for many of the Republicans who voted for Roosevelt last Fall are now registering Democratic. . . . While hundreds of thousands of Republicans voted for the Democratic candidate for Governor in 1930, they continued to enroll as Republicans. . . . It is to be borne in mind that the Roosevelt vote in Pennsylvania, only 157,592 below that of Hoover, compared with Republican pluralities of nearly 1,000,000 in the two preceding Presidential contests, was on a registration or enrollment more than three to one Republican. In Allegheny county [Pittsburgh], which went for Roosevelt by more than 37,000, the enrollment was Republican by nearly nine to one." William T. Martin, in *New York Times*, July 2, 1933, sec. 4, p. 6 E, cc. 4–5.

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voters,[150] and which is probably conducive to somewhat better political morals and somewhat better government.[151]

Turning briefly to the minor parties for purposes of comparison, it may be noted that these regularly have very strict membership requirements in contrast with the loose requirements of the major parties. In order to join the Socialist party, for example, a person must make formal application for membership, must meet certain requirements of age and residence,[152] must declare his belief in and support of the party principles as determined by the appropriate party authority, must agree not to participate in the activities of any other political organization or in any way aid in the election of any but Socialist candidates for office (unless by special consent of the appropriate party committee),[153] and must contribute regularly to the financial support of the party.[154] Other minor parties have similar, if not identical requirements.[155]

[150] "The Republican leaders . . . have figured it out that tens of thousands of Pennsylvanians who have voted with the Democrats in the last eight years while registering their affiliation with other parties, now [1936] have registered Democratic. This, they argue, will help reduce the margin of Democratic votes in excess of the party registration. The figures boil down to this, according to the Republicans: they come nearer than at any time since before the depression to showing the actual relative strength of the two major parties in Pennsylvania." Lawrence E. Davies, in *New York Times*, Oct. 25, 1936, sec. 4, p. 6 E., c. 6.

[151] "Pennsylvania has become a two-party state, with a promise of better government in the future. When the State registration and vote was one-sided and the minority party stood no chance whatever, the people of the Commonwealth had little voice in the government." *Pennsylvania Manual*, Vol. 83 (1937), p. 166.

[152] These permit non-voters to be members, the age requirement for membership being eighteen, although members under twenty-one are not permitted to take part in nominations of party candidates for public office; the residence requirement is residence in the United States merely, with no stated period; for many years, there was a requirement that a person be a citizen or immediately apply for citizenship, but the 1937 constitution contains no provision with respect to citizenship.

[153] In 1927, Jacob Panken, the only Socialist on the Municipal Court of New York City, declined to accept a Republican nomination for reëlection, saying: "I am the candidate of the Socialist Party. My own convictions and the policy of the Socialist Party do not permit my acceptance of the nomination from any other political party. . . . If my services to the people merit reëlection . . . I want to be reëlected as a Socialist." *New York Times*, Aug. 31, 1927.

[154] Socialist Party Constitution (adopted Mar. 29, 1937), esp. Arts. III, X, XI, in *Socialist Handbook* (1937), pp. 62–78.

[155] American Labor Party By-Laws and Rules, in *American Labor Party Handbook* (1937), p. 19; Workers [Communist] Party Constitution, esp. Arts. 3, 15–16, in *Report of Special House Committee on Un-American Activities* [Dies Committee] (H. Rept. No. 2, 76th Cong., 1st Sess.), Appendix, Pt. I, pp. 310–319 (1940). [This

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There is thus established for these minor parties what may be called "dues-paying membership," to be carefully distinguished from the enrolled membership provided for by law in some states, and of course from mere voting affiliation at the polls.[156] It is the dues-paying members who control the party machinery, and who actually determine the party principles, policies, and program.[157] On this dues-paying basis, the Socialist party grew from a membership of about 10,000 in 1900 to a peak of about 118,000 in 1912, then declined, at first gradually but after the World War very sharply, to almost its original number in 1922 and to only about 16,000 in 1932.[158] The Communist party, on this same basis, probably had a membership of 10,000–15,000 in the decade 1920–30,[159] while the Socialist Labor party claimed only 2,500 in 1924 and 2,000 in 1928.[160] This rather pitiful membership is in striking contrast with the vote of these parties, small as that is,[161] and even with the "enrolled membership" under the statutes.[162] It represents, how-

part of the Dies Committee Report is generally known as the Red Book, not to be confused with the *New York Red Book*, the manual previously cited.]

[156] "The State office of the Party will not be satisfied with membership results until the organization has enrolled at least ten per cent of the citizens who cast their votes for the American Labor Party." *American Labor Party Handbook* (1937), p. 13. Attention has previously been called to the fact that in the case of this party there was in 1940 a close correspondence between the dues-paying membership and the vote, although if individual membership only were counted the membership was approximately twenty per cent of the vote. *Supra*, p. 249.

[157] See Sait's distinction between the "dues-department organization" and the "legal organization" of the Socialist party. Sait, *American Parties and Elections* (ed. 1927), p. 314, n. 3; (rev. ed., 1939), p. 395, n. 3. Cf. this pertinent item in respect to the New York Socialist convention, Apr. 18, 1936: "Today's convention was devoted to the task of setting up the new party State organization on the basis of the dues-paying membership, as distinct from the purely legal machinery represented by the State committee elected in the primary." Joseph Shaplen, in *New York Times*, Apr. 19, 1936, sec. 1, p. 17, cc. 1–2.

[158] Figures in *Literary Digest*, Sept. 20, 1919; James Oneal, "Changing Fortunes of American Socialism," *Current Hist.*, Apr., 1924, esp. p. 92; *Report of National Secretary to the Socialist National Convention, 1940* (mimeographed), p. 3.

[159] *Report of House Committee to Investigate Communist Activities in the United States* [Fish Committee] (H. Rept. No. 2290, 71st Cong., 3rd Sess., Jan. 17, 1931), pp. 15, 94. See also membership tables for 1922–1925, in *Report of 4th National Convention of Workers* [Communist] *Party* (1925), pp. 27–41.

[160] *Minutes and Reports of 16th National Convention of Socialist Labor Party, 1924*, pp. 94, 101; *ibid., 17th Convention, 1928*, p. 59.

[161] E.g. *Socialist:* (1912) membership 118,045, vote 897,011; (1920) membership 26,766, vote 919,799; (1932) membership 16,000, vote 884,784. *Communist:* (1932) membership ca. 12,000, vote 102,991; *Socialist Labor:* (1928) membership 2,000, vote 21,644.

[162] For example, the Socialist dues-paying membership in New York State was

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ever, a thoroughly cohesive group in each case, the individual members of which agree on principles and are ready to subject themselves loyally to a considerable degree of party discipline in order to promote those principles;[163] and the influence of such a loyal, disciplined, and cohesive group is probably very much greater than its mere numbers might suggest.[164]

It need not be concluded from all this that the major parties should adopt the plan and methods of the minor parties. Indeed, it is doubtful whether American opinion would tolerate such a departure from the traditional looseness of our two-party system; and, in fact, a congressional committee has already indicated that, in order to be truly American, a party must be loosely organized, with complete freedom on the part of the party members to do as they like at any time, to refuse to work for the party, to refuse to contribute to its support, to vote against its candidates, to quarrel with its principles, and yet presumably to remain within the party organization as members in good standing.[165] That committee was

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estimated at about 4,000 in 1936, while the statutory enrolled membership was 20,029, and the gubernatorial vote 96,233. *New York Times*, Apr. 19, 1936, sec. 1, p. 17, c. 1; *N. Y. Red Book, 1937*, pp. 429–431. It should be noted that this was a year of bitter dissension between right- and left-wing Socialists, which no doubt caused a loss of membership, and which, in fact, raised problems of rightful membership that cannot be examined in this article.

[163] The Socialist Party Constitution empowers the local organizations to expel or otherwise discipline members, subject to appeal to State and National Committees, and "subject to the uniform conditions of membership and discipline laid down by the National Executive Committee on the basis of national convention decisions." (Art. III, sec. 5; Art. X, sec. 1.) The Communist party provisions are much more stringent on this point. (Art. 15). For an interesting attempt to explain the meaning and importance of party organization and discipline, see Report of National Executive Committee, in *Minutes and Reports of 17th National Convention of Socialist Labor Party* (1928), pp. 69–79.

[164] The National Secretary of the Socialist party claimed, in his report for 1940, that "it is possible to have a relatively small party in terms of year-round membership, which is highly effective," and pointed out that the party polled almost as large a vote in 1932, with one-seventh of the membership, as it did "at the peak of our membership strength in the radical 'Golden Age' of 1912." *Report, 1940, op. cit.*, p. 3. Cf. Report of Socialist Labor National Executive Committee in 1924, *op. cit.*, p. 16.

[165] "It is essential to understand in considering the subject that the Communist party of the United States is not a political party in the true American sense. . . . Under our political party system, any citizen having proper residential qualifications cannot be denied the privilege of joining a party nor can he be expelled from it. He is not even bound to vote for the candidates of his own party; in truth, under the American system of parties the initiative rests wholly with the individual and assures his complete freedom of political action. . . . It will be observed, therefore,

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apparently unaware of the numerous developments to which attention has been called in this paper, having as their purpose the protection of the major party organizations against those with extremely loose party consciences—developments which have gone so far in several states as to introduce the conception of party disloyalty or party treason, on the part of party officers at any rate, and to provide methods of ousting disloyal or traitorous members from responsible party positions, if not from actual membership in the party.[166] These developments seem to require some better definition or understanding of what is meant by a loyal Republican and a loyal Democrat. It ought to be possible, as it would seem to be desirable, to make our major party organizations somewhat more closely knit and responsible than they now are, in order that their declarations of platform and principle may be something better than glittering generalities, may represent something like the actual views of the respective groups, and may offer some fairly clear alternative programs to the voter. Somehow or other it should be possible to have a party system which would make it clear whether Wendell Willkie or Senator Nye is the better Republican, whether Franklin D. Roosevelt or Senator Wheeler is the better Democrat.

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that stringent conditions are imposed upon the [Communist] party membership which are wholly foreign to the American conception of political organization. . . . " *Report of Special House Committee for Investigation of Nazi and Other Propaganda* (H. Rept. No. 153, 74th Cong., 1st Sess.), pp. 21–22.

[166] In Pennsylvania, the Republican party has provided that whenever a member of the Republican National, State, or other committee, or a delegate to a Republican convention, is charged "with not being a qualified Republican elector, or who opposes or is about to oppose the Republican Party or any of its candidates, or who neglects or refuses to attend to the duties of his office," he is to be given a hearing by a committee of "three qualified Republican electors," and if the charges are substantiated he is to be removed from his office. *Rules of the Republican Party of Pennsylvania* (adopted 1921, amended 1932), Rule I, sec. 3. In Colorado, the Democratic State Central Committee was empowered to hear charges against and to remove party state or county committeemen or officers "for disloyalty to the party, failure, refusal or neglect to perform the duties of the office, including failure to support any party candidate, . . . failure to comply with the rules of the party, or for any political reason which in the opinion of the State Central Committee is for the best interest of the party." *Plan of Organization and By-Laws of the Democratic Party of Colorado* (adopted 1922), Art. III, Sec. 9. In New York, the statutes provide that after notice and hearing "a member of a party committee may be removed by such committee, for disloyalty to the party or corruption in office." *N. Y. Election Law* (ed. 1941), p. 5 [Art. 2, sec. 16]. This provision dates back at least to 1911; similar provisions are found in statutes or party rules in other states.

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CONSTITUTIONAL LAW IN 1940–1941

THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1940

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The membership of the Supreme Court underwent but one change during the 1940 term. Mr. Justice McReynolds retired on February 1, 1941. Chief Justice Hughes retired on June 2, 1941, after the term had closed. The vacancies thus created were both filled during the summer recess. Mr. Justice McReynolds, a Tennessee Democrat, was Attorney-General in President Wilson's first cabinet, and was appointed to the Court in 1914. He has long been rated one of the most conservative of the justices and was a consistent and bitter opponent of the New Deal and all its works. Mr. Justice Van Devanter, who had retired in 1937, died on February 8, 1941.

A. QUESTIONS OF NATIONAL POWER

I. LEGISLATIVE POWER

1. COMMERCE POWER

1. The Fair Labor Standards Act Held Valid. It had been widely assumed that the Court would uphold the constitutionality of the Fair Labor Standards Act of 1938; but this does not lessen the importance of the decision itself, United States v. Darby,[1] which puts the capstone on the Court's recent interpretation of the scope of the commerce clause, and squarely reverses the highly controversial case of Hammer v. Dagenhart.[2] The Fair Labor Standards Act sought to abolish substandard labor conditions in the industries which produce goods for the interstate market. It forbade three principal things. First, it forbade the employment of workmen in the making of goods "for interstate commerce" at less than prescribed minimum wages, and for more than prescribed maximum hours. Second, it forbade the shipment in interstate commerce of goods in the production of which these wage and hour standards had been violated. Third, it forbade the shipment in interstate commerce of goods made in establishments in which "oppressive child labor" had been employed, essentially the provision of the Keating-Owen Child Labor Act of 1916, held void in Hammer v. Dagenhart. The act further required all employers subject to the act to keep detailed records of wages, hours, and other conditions of employment to facilitate the enforcement of the law.

[1] 312 U.S. 100, 1941.

[2] 247 U.S. 251, 1918. See Professor T. R. Powell's comment in this REVIEW, Vol. 13, p. 47.

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The administration of the statute was placed in the hands of an Administrator of the Wage and Hour Division in the Department of Labor. Darby shipped in interstate commerce lumber produced by labor which was paid less and worked longer than the act allowed, and he failed to keep the required records. He alleged that the act was unconstitutional on three grounds: first, it is beyond the scope of the commerce clause, which does not warrant the federal regulation of the conditions of manufacturing goods; second, it violates the Tenth Amendment by invading the reserved powers of the states; third, it violates the due process clause of the Fifth Amendment. The district court held the act invalid on the first and last of these grounds.

The Court, without dissent, held the act constitutional. In his opinion, Mr. Justice Stone covered four points. First, Congress may validly forbid the shipment in interstate commerce of goods produced under substandard labor conditions. The commerce power, in the words of Marshall in Gibbons v. Ogden,[3] "is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution." The act does not invalidly trespass on state power merely because "its motive or its consequence is to restrict the use of articles of commerce within the states of destination." It is designed to give effect to the "congressional conception of public policy that interstate commerce should not be made the instrument of competition in the distribution of goods produced under substandard labor conditions, which competition is injurious to the commerce and to the states from and to which the commerce flows." The motives and purposes which lead Congress to regulate interstate commerce "are matters for the legislative judgment, upon the exercise of which the Constitution places no restriction and over which the Courts are given no control." Thus Congress enjoys power which is "plenary to exclude any article from interstate commerce subject only to the specific prohibitions of the Constitution." This cannot be reconciled with the decision in Hammer v. Dagenhart,[4] and that case, therefore, "should be and now is overruled." In Hammer v. Dagenhart, "a bare majority of the Court, over the powerful and now classic dissent of Mr. Justice Holmes," limited the power of Congress to exclude articles from interstate commerce "to articles which in themselves have some harmful or deleterious property—a distinction which was novel when made and unsupported by any provision of the Constitution," and which "has long since been abandoned." The power of Congress over interstate commerce is the same in extent and in character as the power of the states over intrastate commerce.

Secondly, Congress may validly impose on employers wage and hours

[3] 9 Wheaton 1, 1824. [4] *Supra*, note 2.

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restrictions with respect to all workmen engaged in making goods for the interstate market, even though these workmen are admittedly not "engaged in interstate commerce." The Court has long held that Congress may validly deal with local or intrastate activities when they are so related to interstate commerce and so affect it "as to be within the reach of the power of Congress to regulate it." This is the situation here. Congress is trying to prevent "the spread of substandard labor conditions through the use of the facilities of interstate commerce for competition by the goods so produced under the prescribed or better labor conditions." A reasonable and effective way of doing this is to forbid entirely the making of any goods for interstate commerce under labor conditions which are substandard. "The means adopted . . . for the protection of interstate commerce by the suppression of the production of the condemned goods for interstate commerce is so related to the commerce and so affects it as to be within the reach of the commerce power." The Fair Labor Standards Act is in no way forbidden by the Tenth Amendment. Hammar v. Dagenhart, it will be recalled, rested in part on the theory that for Congress to strike at child labor through the commerce power was to violate the Tenth Amendment by using a delegated federal power to accomplish an undelegated and therefore unconstitutional end. "The grant of authority," it was said, "over a purely federal matter was not intended to destroy the local power always existing and carefully reserved to the states in the Tenth Amendment . . . . " This same doctrine was relied upon to invalidate the Agricultural Adjustment Act in United States v. Butler.[5] This doctrine is bluntly discarded by Mr. Justice Stone, who, it will be remembered, filed a powerful dissent in the Butler case. He here observed: "The [Tenth] Amendment states but a truism that all is retained which has not been surrendered. There is nothing in the history of its adoption to suggest that it was more than declaratory of the relationship between the national and state governments as it had been established by the Constitution before the Amendment. . . . From the beginning and for many years the amendment has been construed as not depriving the national government of authority to resort to all means for the exercise of a granted power which are appropriate and plainly adapted to the permitted end . . . Whatever doubts may have arisen of the soundness of that conclusion, they have been put at rest by the decisions under the Sherman Act and the National Labor Relations Act which we have cited."

The two remaining points of the opinion were dealt with briefly. To require the employer to keep adequate records of wages, hours, and other conditions of labor to aid the Administrator in determining whether the law has been violated is clearly "an appropriate means to the legitimate

[5] 297 U.S. 1, 1936. See this REVIEW, Vol. 31, p. 254.

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end." Finally, the act does not violate the Fifth Amendment. It is now firmly established that reasonable legislative regulations of wages and hours of labor do not deny due process of law. There is no want of due process in applying the statute to men and women alike. Also, the act "is sufficiently definite to meet constitutional demands."

The decision in the Darby case is of tremendous importance. Together with the decisions sustaining the Wagner Act, it assures to Congress under the commerce clause full power to protect and promote the interests of the overwhelming bulk of American labor. It also clears the constitutional atmosphere with respect to the Tenth Amendment. That the reserved powers of the states could be soundly invoked to limit the scope and exercise of the delegated powers of Congress had never been a persuasive doctrine. That ghost seems now to be effectively laid.

In Opp Cotton Mills, Inc., v. Administrator,[6] the Court disposed of a series of attacks on the administration of the Fair Labor Standards Act. It found no invalid delegation of legislative power to the Administrator or to the Industry Committees through whom he worked in prescribing wages and hours. The standards set up in the act for the guidance of the administrative agency are satisfactorily definite. Mr. Justice Stone observed: "The Constitution, viewed as a continuously operative charter of government, is not to be interpreted as demanding the impossible or the impracticable. The essentials of the legislative function are the determination of the legislative policy and its formulation as a rule of conduct. Those essentials are preserved when Congress specifies the basic conclusions of fact upon ascertainment of which, from relevant data by a designated administrative agency, it ordains that its statutory command is to be effective. The present statute satisfies those requirements." The Court found no lack of due process in the procedure before the Industry Committee, or in the procedure before the Administrator. It found also that the findings of fact of the Administrator were supported by substantial evidence and must therefore, under the statute, be treated as conclusive.

2. Federal Control of Navigable Waters and Water Power. In another series of decisions of great importance, the Court established the plenary control of the federal government over navigable waters and the hydroelectric power derived from them. In so doing, it settled a number of questions on which there had been long-standing uncertainty and dispute. The principal case was United States v. Appalachian Electric Power Co.[7] The facts were as follows: Under the Federal Water Power Act of 1920, it is unlawful to construct a dam for water-power development in a navigable water of the United States without first securing a license from the Federal Power Commission. Such a license, by the provisions of the act, rigorously controls the affairs of the licensee in the matter of service, rates, and

[6] 312 U.S. 126, 1941. [7] 311 U.S. 377, 1940.

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profits, and provides for the acquisition by the government of the licensed project at the end of fifty years on payment of the company's "net investment" as defined. It is also unlawful to construct a dam in a non-navigable stream unless the Federal Power Commission, having satisfied itself that the interests of interstate and foreign commerce will not be affected, grants permission. Over a period of years, the Appalachian Company tried to obtain from the Commission either a license or permission to construct a power dam on terms which it was willing to accept, but failed to do so. In 1934, it began building a dam in the New River, which flows through Virginia and West Virginia, and the government thereupon sought an injunction. The company alleged that the New River is not navigable, and that even if it were navigable the conditions which the Commission sought to impose in the terms of the license offered to the company were unconstitutional since they had nothing to do with navigation or with "the protection of the navigable capacity of waters of the United States." Forty-one states joined as *amici curiae* to protest the authority asserted by the Commission.

Speaking through Mr. Justice Reed, the Court sustained the injunction. It held, first, that the New River is navigable. A commonly accepted test of navigability is that stated in the case of the Daniel Ball[8] in 1871. The Court there said: "Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce . . . . " This test the Court proceeded to modify. It declared: "To appraise the evidence of navigability on the natural condition only of the waterway is erroneous. Its availability for navigation must also be considered." Applying this test of potential navigability or "effect of improvability," the Court concluded that the New River, in spite of existing rapids, shallows, gorges, and other obstructions, is a navigable river, since by the expenditure of a not unreasonable sum of money it could be made navigable in fact. In the second place, the Court held that the government's power over navigable waters is not restricted to control which relates to navigation. The power being exercised is the commerce power, of which control of navigability is but a part. "Flood protection, watershed development, recovery of the cost of improvements through utilization of power, are likewise parts of commerce control. . . . Navigable waters are subject to national planning and control in the broad regulation of commerce granted the Federal Government." It follows that "the license conditions to which objection is made have an obvious relationship to the exercise of the commerce power." Even if there were no such relationship, Congress in the exercise of its plenary power over navigable waters could forbid all obstructions in such waters. It may

[8] 10 Wallace 557, 1871.

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therefore grant the privilege of building such obstructions on its own terms. In the third place, the company is not denied due process in having to submit under the terms of the license to the government's right to acquire the company's dam and plant at the end of fifty years at less than the "fair value" at the time of the taking. There can be no private property in the flow of the stream, and if the company's property passes to the government at less than its full value, that is but the price which the government may exact for the privilege of building the dam and thus obstructing the stream. The acquisition of these power properties by the federal government in no way invades the sovereignty of the states, since it takes place by the exercise of delegated powers.

On the question of navigability, Mr. Justice Roberts dissented, joined by Mr. Justice McReynolds. He urged that the Court should have followed the findings of the lower federal court on the facts as to navigability. Nor did he accept the Court's new test of potential navigability through possible improvement. "If this test be adopted, then every creek in every state in the Union which has enough water, when conserved by dams and locks or channelled by wing dams and sluices, to float a boat drawing two feet of water, may be pronounced navigable because, by the expenditure of some enormous sum, such a project would be possible of execution. In other words, Congress can create navigability by determining to improve a non-navigable stream."

It seems clear that by this case the Court has placed on a firm constitutional footing the absolute control of the United States over the water power resources of the country. The practical implications of this are of tremendous importance.

Two other cases involved federal power over navigable waters. In Oklahoma *ex rel* Phillips v. Guy Atkinson Co.,[9] the governor of Oklahoma sought to enjoin the United States from building the Denison Reservoir on the Red River in Texas and Oklahoma as authorized by an act of Congress in 1938. He alleged that the dam will flood some 100,000 acres of Oklahoma land, thereby seriously reducing taxable income; that it will produce power from Oklahoma water to be sold chiefly in Texas; that the dam has been built higher than necessary for flood control in order to generate power for commercial purposes; and that any resulting benefits to the navigability of the Red or Mississippi Rivers are intangible, indirect, and unsubstantial. The Court unanimously upheld the government's power to build and operate the project. The opinion was written by Mr. Justice Douglas. The enterprise is part of a national system of flood control designed to protect commerce on the Mississippi and its major tributaries. The power of Congress extends to the non-navigable tributaries of navigable streams when necessary to protect the navigable

[9] 313 U.S. 508, 1941.

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rivers. It is for Congress to decide how necessary such regulation is and to plan the details of its execution. Since Congress has effected flood control and improved navigation by this project, it is immaterial that it is also generating power. Dams may be built for several purposes as long as one of them is constitutional, and the valid purpose need not be the primary one. Since Congress has here exercised its commerce power, there has been no invasion of state authority in violation of the Tenth Amendment.

United States v. Chicago, M. St. P. & P. R. Co.[10] held that federal power to improve navigation extends to the entire bed of a stream, which means all of the land below high-water mark. The railroad, as a riparian owner, had built embankments along the Mississippi, portions of which were placed between high and low water-marks. These did not obstruct navigation. By building a dam to improve navigation, the government flooded this area. The Court held that it was not required to pay compensation for this damage. This is not a taking of private property, since the riparian owner's rights are "subordinate to the dominant power of the federal government in respect of navigation."

2. FEDERAL POWER OVER PRIMARY ELECTIONS

In United States v. Classic,[11] the Court has finally upheld the power of Congress to regulate congressional primary elections. It reached this result by a very roundabout method. Classic was a commissioner of elections in New Orleans. With others, he was indicted in a federal district court for wilfully altering and falsely counting ballots cast in a congressional primary election in that city in 1940. It was charged that Classic had thereby violated two sections of the Criminal Code as follows: Section 19 makes it a crime for "two or more persons [to] conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States . . . "; while Section 20 punishes anyone who "under color of any law, statute, ordinance, regulation or custom, wilfully subjects . . . any inhabitant of any state, territory, or district to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States . . . . " To apply these sections of the Criminal Code to the conduct of Classic is to assume that the right of a qualified voter in a congressional primary election to have his vote honestly and correctly counted is a right secured by the Constitution and laws of the United States. The Court, speaking through Mr. Justice Stone, held that this assumption is correct. The Constitution establishes the right of qualified voters to choose congressmen. Article I, section 2, directs that members of the House of Representatives be "chosen every second year by the people of the several states," while Article I, section 4,

[10] 312 U.S. 592, 1941. [11] 313 U.S. 299, 1941.

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after giving the state a general management of congressional elections, authorizes Congress "to make or alter such regulations" by law. The exact nature of the right secured to qualified voters to choose congressmen is determined, therefore, by the laws of the state in which he lives, plus such regulations as Congress may impose. The primary election is a vital part of the congressional election system in Louisiana. It is, in fact, so vital a part of it that a candidate's success in the primary guarantees his success in the final election. It follows that the constitutional right of the voter to "choose" a congressman includes the right to cast a ballot in a congressional primary election and have it counted as cast. "The words of sections 2 and 4 of Article I . . . require us to hold that a primary election which involves a necessary step in the choice of candidates for election as representatives in Congress, and which in the circumstances of this case controls that choice, is an election within the meaning of the constitutional provision and is subject to congressional regulation as to the manner of holding it." By the acts charged against him, Classic interfered with the constitutional right of the citizen to have his vote properly counted in a congressional primary, and he thereby violated the sections of the Criminal Code which forbid the invasion of this right.

The Court's decision is in conflict with what has been commonly spoken of as the doctrine of Newberry v. United States,[12] decided twenty years ago. Newberry had been convicted of violating the federal corrupt practices act by spending in a senatorial primary campaign more money than the statute allowed. The Supreme Court set aside the conviction. Four justices held that the Constitution gave Congress power to regulate congressional elections, but not congressional primaries. Newberry had not, therefore, committed a federal crime. Four justices held that Congress could validly regulate congressional primaries. The ninth justice concurred in reversing the conviction on grounds having nothing to do with the constitutional issue. The case has often been loosely referred to as holding that Congress has no power to regulate congressional primaries, but Mr. Justice Stone in the present case observes: "The question then has not been prejudged by any decision of this Court."

A vigorous dissent was filed by Mr. Justice Douglas, concurred in by Justices Black and Murphy. He agreed that Congress has power to regulate congressional primaries, but denied that Congress has either intended or accomplished such regulation by the sections of the Criminal Code invoked against Classic. "Civil liberties are too dear to permit conviction for crimes which are only implied and which can be spelled out only by adding inference to inference." It seems unreasonable that Congress "by leaving section 19 of the Criminal Code unmolested for some seventy years has legislated unwittingly on primaries."

[12] 256 U.S. 232, 1921. See Professor E. S. Corwin's comment in this REVIEW, Vol. 16, p. 22.

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The Classic case involved no question of racial discrimination, but the doctrine announced seems to bear directly upon the result reached in Grovey v. Townsend,[13] the last of the Texas Negro primary cases. It was there held that the exclusion of Negroes from voting in the primary of the Democratic party did not deny the equal protection of the laws in violation of the Fourteenth Amendment, because the exclusion was not the result of state action, but of private unofficial action by the party. The case rests on the theory that a party primary is a private enterprise and not part of the election machinery of the state. The Court refused to "confuse the privilege of membership in a party with the right to vote for one who is to hold public office." It is true that certain aspects of the legal status of parties in Texas lent more plausibility to this distinction than might be found in other states. But under the doctrine of the Classic case, the primary election is an integral part of the machinery of elections, and the constitutional right of the citizen to vote in one includes the right to vote in the other. Furthermore, if the right to vote in a congressional primary is a vital part of the constitutional right to "choose" members of Congress, it is reasonable to infer that the right to vote in primary elections is a vital part of the constitutional right to "vote" which the Fifteenth Amendment protects from discrimination on racial grounds. The writer believes that United States v. Classic forecasts the reversal of Grovey v. Townsend.

3. NATIONAL DEFENSE—THE ESPIONAGE ACT OF 1917

Questions relating to the scope and validity of the Espionage Act of 1917 were settled in favor of the government in Gorin v. United States.[14] Gorin, a paid agent of the Russian government, bought from a civilian investigator of the Naval Intelligence Office in California some fifty confidential reports from the files of that office. These related to Japanese activities on the West Coast. The statute is not so indefinite as to deny due process by forbidding the obtaining or delivering of information "connected with the national defense." These words have "a well understood connotation." Nor was it necessary for the government to show that the documents and information secured were to be used "to the injury of the United States." The statute equally forbids the obtaining of information relating to national defense "to be used . . . to the advantage of any foreign nation." No distinction is made "between friend or enemy."[15]

II. JUDICIAL POWER

An unusually large number of cases dealt with federal judicial power and the work of the courts, though few raised questions of general interest.

[13] 295 U.S. 45, 1935. See this REVIEW, Vol. 30, p. 85. [14] 312 U.S. 19, 1941.

[15] Bacardi Corporation of America v. Domenech, 311 U.S. 150, 1940, held that a treaty entered into by the United States cannot be overridden by a Puerto Rican statute.

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Seven of these[16] may be classed together as cases in which the Court was "mopping up" after its far-reaching decision in Erie Railroad Co. v. Tompkins[17] in 1938, overruling the old case of Swift v. Tyson.[18] In all of these cases, the Court rigidly applied the new rule that the federal courts in cases arising on diversity of citizenship must apply state law as declared by the state's highest court. Failure or refusal to do this in the varying circumstances of these cases was in every instance held improper.

The well-grounded reluctance of the Supreme Court to permit federal courts to enjoin the enforcement of state criminal laws was shown in three cases. In Beal v. Missouri Pacific R. Corporation,[19] the Court refused to sustain such an injunction against the enforcement of a state full-crew law. There was no clear showing of the multiplicity of suits alleged to be imminent or any other irreparable injury. In Watson v. Buck,[20] and Marsh v. Buck,[21] involving state anti-trust actions against ASCAP (American Society of Composers, Authors, and Publishers), it was held that a federal court ought not to enjoin the enforcement of a multi-provisioned state criminal statute on constitutional grounds until the state supreme court has had an opportunity to interpret the statute. To do so in advance of efforts to enforce the separate provisions of the act is "analogous to rendering an advisory opinion upon a statute or a declaratory judgment upon a hypothetical case."

In Sibbach v. Wilson & Co.,[22] the Court held valid certain of the Rules of Civil Procedure for District Courts of the United States which authorize the court to order a person to submit to a physical or mental examination in cases in which his mental or physical condition is in controversy. The plaintiff, seeking to recover damages for alleged bodily injuries, refused to submit to a physical examination when ordered to do so by the court, and was committed for contempt. An act of Congress of 1934 delegated to the Supreme Court the power to prescribe rules of civil procedure for the federal courts. The act provided, however, that "said rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant." Is the right to resist a physical examination a "substantive" right? The Court held that it was not. A "substantive" right does not necessarily mean a "substantial" or "important" right. "The test must be whether a rule really regulates procedure," and this one admittedly does so. Furthermore,

[16] Fidelity Union Trust Co. v. Field, 311 U.S. 169, 1940; Six Companies of California v. Joint Highway Dist. No. 13, 311 U.S. 180, 1940; West v. American Teleph. & Teleg. Co., 311 U.S. 223, 1940; Stoner v. New York Life Insur. Co., 311 U.S. 464, 1940; Vandenbark v. Owens-Illinois Glass Co., 311 U.S. 538, 1941; Moore v. Illinois Central R. Co., 312 U.S. 630, 1941; Klaxon Co. v. Stentor Electric Mfg. Co., 313 U.S. 487, 1941.

[17] 304 U.S. 64, 1938. See this REVIEW, Vol. 33, p. 246.

[18] 16 Peters 1, 1842. [19] 312 U.S. 45, 1941.

[20] 313 U.S. 387, 1941. [21] 313 U.S. 406, 1941. [22] 312 U.S. 1, 1941.

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the rules were submitted to Congress before they became effective and Congress raised no objection to the rule here questioned. It may, therefore, be assumed that it does not violate legislative intent.

Mr. Justice Frankfurter dissented in an opinion in which Justices Black, Douglas, and Murphy concurred. He said: "So far as national law is concerned, a drastic change in public policy in a matter deeply touching the sensibilities of people, or even their prejudices as to privacy, ought not to be inferred from a general authorization to formulate rules for the more uniform and effective dispatch of business on the civil side of the federal courts." So drastic a change in rules ought to be supported by specific legislation.

The rule that the United States may be sued only under the terms of its own consent is strictly applied in United States v. Sherwood.[23] Sherwood recovered a judgment against one Kaiser for some $5,000. Kaiser, it was alleged, was entitled to sue the United States for damages amounting to some $14,000 for breach of a government contract for the construction of a post-office building. Sherwood sought to sue the United States and Kaiser jointly in a federal district court to compel the United States to pay Kaiser, and Kaiser, thereupon, to pay Sherwood. The Court held that the district court had no jurisdiction in such a suit against the government. The jurisdiction of the Court of Claims, embodying the terms on which the United States has consented to be sued, extends only to cases in which the plaintiff brings suit against the government alone, not when joined with any private party. The Tucker Act of 1887 gives to the federal district courts the same jurisdiction over claims against the United States as that given to the Court of Claims. Here the plaintiff has a claim against the government only because he had a claim against Kaiser, and Congress has never consented to suits of this nature.

The power of federal courts to punish for criminal contempt was involved in Nye v. United States.[24] While the case turned on a point of statutory construction, it is, nevertheless, of great practical importance and overrules an earlier much-criticized decision. The facts were as follows: One Elmore brought suit in the federal district court in North Carolina against a firm making and selling a medicine, alleging that his son died from the use of the medicine. He was illiterate, and feeble in mind and body. By the use of liquor and persuasion, Nye induced Elmore to seek to have the case dismissed, and this attempt was made. Nye was cited for contempt of the district court for having attempted to prevent the trial of Elmore's suit on its merits, thus obstructing the administration of justice. He was adjudged guilty and fined. In an opinion by Mr. Justice Douglas, the Supreme Court reversed this judgment. The Court agreed with the trial judge that this was a criminal and not a civil contempt. "A

[23] 312 U.S. 584, 1941. [24] 313 U.S. 33, 1941.

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contempt is considered civil when the punishment is wholly remedial, serves only the purposes of the complainant, and is not intended as a deterrent to offenses against the public. The facts of this case do not meet that standard." The crucial issue was whether Nye could be summarily punished for contempt, or whether he should have been indicted and tried by a jury. The answer depends upon the meaning and applicability of two sections of the Criminal Code. One of these, derived from a statute of 1831, contains the proviso: "that the power of the several courts of the United States to issue attachments and summary punishments for contempts of court shall not be construed to extend to any cases except the misbehavior of any person or persons in the presence of the said courts, or so near thereto as to obstruct the administration of justice . . . " The other section provides for the normal criminal prosecution of persons who corruptly or by threats or force seek to obstruct or impede the administration of justice by such means. Nye's offense was committed a hundred miles from where the district court was sitting. The Court held that it was not punishable summarily as a contempt. The words "in the presence of the said courts" and "so near thereto as to obstruct the administration of justice," used in the sections of the code just quoted, have a geographical, not a causal, connotation. This view is supported by the legislative history of the statute, which was passed to curb early judicial abuse of the contempt power. In Toledo Newspaper Company v. United States,[25] decided in 1918, the Court upheld a federal district judge in summarily punishing a newspaper for contempt for having published objectionable comments about the judge and his conduct of pending litigation. Mr. Justice Holmes, joined by Mr. Justice Brandeis, had sharply dissented, and the case aroused wide controversy. This case is now squarely overruled, and the power of federal judges to punish for contempt under existing law is held to extend only to misconduct "in the vicinity of the court, disrupting to quiet and order or actually interrupting the court in the conduct of its business." If Nye is to be punished, it must be under other sections of the Criminal Code and under the normal safeguards of a criminal trial.

Mr. Justice Stone, with whom Chief Justice Hughes and Mr. Justice Roberts concurred, dissented on the ground that "this Court has hitherto, without dissenting voice, regarded the phrase "so near thereto" as connoting and including those contempts which are the proximate cause of actual obstruction to the administration of justice, whether because of their physical nearness to the court or because of a chain of causation whose operation in producing the obstruction depends on other than geographical relationships to the court." If this long-standing rule is to be changed, it should be done by Congress and not by the Court.

[25] 247 U.S. 402, 1918. See Professor T. R. Powell's comment in this REVIEW, Vol. 13, p. 236.

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III. FEDERAL CIVIL RIGHTS

DISCRIMINATION AGAINST NEGROES IN INTERSTATE COMMERCE

Recent decisions make it clear that the Court will insist that Negroes receive, under Southern segregation laws, accommodations and treatment substantially equal to those given to whites. This was emphasized in the Negro law school case of Missouri *ex rel* Gaines v. Missouri,[26] and the rule is again strictly enforced in Mitchell v. United States.[27] Mitchell, a Negro congressman from Chicago, travelled from Chicago to Hot Springs, Arkansas, on a ticket which entitled him to Pullman accommodations. Upon crossing the Arkansas border, he was compelled to leave the Pullman car and ride in a day coach reserved for colored passengers. The railroad would have refunded the difference between the Pullman and coach fares on demand. He alleged the coach to be inferior to those reserved for white passengers and to be "filthy and foul-smelling." The railroad undertook to provide Negroes with "equal but separate" accommodations required by the Arkansas statute, by allowing Negroes wishing Pullman accommodations to buy drawing-room space at ordinary Pullman rates. On the occasion of Mitchell's journey, however, all the drawing rooms had been previously engaged. Negroes were excluded from the Pullman dining car and observation car. Three months later, the railroad replaced the inferior coaches by modern coaches substantially equal to those reserved for white persons. It was not disputed that the demand for Pullman accommodations by Negroes was very small. Mitchell filed a complaint with the Interstate Commerce Commission charging unlawful discrimination in violation of the Interstate Commerce Act. The Commission dismissed the complaint. Speaking through Chief Justice Hughes, the Supreme Court held unanimously that Mitchell was entitled to relief. While brought under a federal statute, the case presented the same basic issues which would have been involved had Mitchell been seeking relief under the Fourteenth Amendment against discriminatory treatment under state law. He was entitled to seek his relief from the Commission, since the statute forbids inequality of treatment by railroads on grounds of race. He was entitled to complain even though he did not intend to repeat his journey. The act is violated by a single instance of unequal treatment. The test of equality is not met by giving Negroes with first-class tickets accommodations equal to those enjoyed by white persons travelling second-class, nor by allowing such Negro passengers to buy drawing-room space if available. Inequality of treatment is not justified by the negligible number of Negroes who desire Pullman accommodations. The Commission may not sanction the discriminatory treatment on the

[26] 305 U.S. 337, 1938. See this REVIEW, Vol. 34, p. 275.
[27] 313 U.S. 80, 1941.

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ground that it will be inconvenient and costly to provide equal accommodations. "The comparative volume of traffic cannot justify the denial of a fundamental right of equality of treatment . . . It is the individual . . . who is entitled to the equal protection of the laws . . . not merely a group of individuals, or a body of persons according to their numbers."[28]

IV. STATUTORY CONSTRUCTION

1. LABOR CASES

1. Cases Under the National Labor Relations Act. Of the seven cases which arose under the Wagner Act, one or two threw new light on the scope of the statute and the powers of the National Labor Relations Board. The most striking of these was Phelps Dodge Corporation v. N.L.R.B.,[29] in which Mr. Justice Frankfurter spoke for the Court. This held it to be an unfair labor practice, within the meaning of the act, for an employer to refuse to hire workmen because of their labor union affiliations, even though he has never employed them before. Previous cases had not gone beyond holding the discharge of workmen for union membership barred by the act. In supporting this new rule, the Court observes: "The course of decisions in this Court since Adair v. United States[30]. . . and Coppage v. Kansas[31]. . . have completely sapped those cases of their authority." These two cases, long and widely criticized, had held unconstitutional federal and state "anti-coercion acts," acts penalizing employer discrimination against union men in hiring and firing. They now pass out of the picture. The Court further upheld the reinstatement of the workmen even though they had in the meantime secured "substantially equivalent" employment. This reinstatement may carry with it back pay, but deduction must be made for wages "wilfully unearned" through refusal by the workmen to accept available employment. While agreeing with the majority on other points, Justices Murphy, Black, and Douglas objected to the Court's rule requiring this deduction from the back pay due to reinstated employees of the amount of "wilfully incurred" loss of wages. Mr. Justice Stone, joined by Chief Justice Hughes, agreed that it is an unfair labor practice to refuse to hire workmen because of union membership, "but it is quite another matter to say that Congress has also authorized the Board to order the employer to hire applicants for work who have never been in his employ and to compel him to give them 'back pay'."

[28] Walker v. Johnston, 312 U.S. 275, 1941, dealt with points of federal procedure in habeas corpus cases, and also held that due process is denied one convicted of crime upon a plea of guilty without the aid of counsel if he did not voluntarily waive his right of counsel, or if he was deceived or coerced by the prosecutor into pleading guilty. Holiday v. Johnston, 313 U.S. 342, 1941, held that the erroneous imposition of two sentences for a single offense does not constitute double jeopardy.

[29] 313 U.S. 177, 1941. [30] 208 U.S. 161, 1906. [31] 236 U.S. 1, 1915.

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In Republic Steel Corporation v. N.L.R.B.,[32] the Board found the company guilty of unfair labor practices, ordered it to discontinue them, to withdraw recognition from a company union, and to reinstate with back pay certain workmen found to have been unlawfully discriminated against by discharge. The order went farther, however, and "directed the company to deduct from the payments to the reinstated employees the amounts they had received for work performed upon 'work-relief projects' and to pay over such amounts to the appropriate governmental agencies." The reinstated workmen would be entitled only to back pay minus their earnings from W.P.A. or similar work-relief projects during the period of their discharge. To require the employer to reimburse the government for the wages paid to these workmen is to assume that the Board may properly punish the employer to this extent for having indirectly imposed an unnecessary financial drain on the government's resources devoted to unemployment relief. Speaking through Chief Justice Hughes, the Court held that Congress has not conferred such power on the Board. The N.L.R.A. is "essentially remedial. It does not carry a penal program declaring the described unfair labor practices to be crimes . . . or provide indemnity against community losses as distinguished from the protection and compensation of employees." Had Congress intended this sort of penalty, it would have said so. "We do not think Congress intended to vest in the Board a virtually unlimited discretion to devise punitive measures." This portion of the Board's order does not seek to effectuate the policies of the N.L.R.A., but "a distinct and broader policy with respect to unemployment." It is therefore invalid. Justices Black and Douglas dissented. "We believe, as did the Board . . . that it may well be said that the policies of the Act will be effectuated by denying to an offending employer the opportunity of shifting to government relief agencies the burden of supporting his wrongfully discharged employees."

In H. J. Heintz Co. v. N.L.R.B.,[33] it was held that the company's refusal to sign a written contract embodying the terms of an agreement with a labor organization was a "refusal to bargain collectively" within the meaning of the statute, and that the Board could order the company to sign.

In N.L.R.B. v. Express Publishing Company,[34] the Board found the company guilty of an unfair labor practice by a refusal to bargain collectively. It issued an order against the continuance of this refusal, and it also ordered the company "to refrain from violating the Act in any manner whatsoever." With three justices dissenting, the Court held the last part of this order too broad. The Board could properly restrain specified un-

[32] 311 U.S. 7, 1940.
[33] 311 U.S. 514, 1941.
[34] 312 U.S. 426, 1941.

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lawful conduct, plus conduct reasonably related to it, but it could not validly include more.[35]

2. Labor and the Anti-Trust Laws—The Norris-LaGuardia Act. In two cases, the Court clarified and strengthened the protection enjoyed by American labor against either criminal prosecutions or injunctions brought under the federal anti-trust laws. The most important of the two cases was United States v. Hutcheson.[36] The defendants were officers of a labor union. They called a strike because of an employer's refusal to employ the members of their union rather than those of a rival union. This is what is called a "jurisdictional strike." In carrying on this strike, the defendants picketed the employer's plant and urged that union members and their friends refrain from buying his product. The employer, Anheuser-Busch, Inc., is engaged in interstate commerce. The strike naturally affected that commerce. Hutcheson and others were indicted for criminal combination and conspiracy in violation of the Sherman Act. The Court held the statute inapplicable. Mr. Justice Frankfurter wrote the opinion. Early decisions of the Court held the Sherman Act applicable to labor union activities which resulted in restraints of interstate trade. These decisions led Congress to pass, first, the labor sections of the Clayton Act, and second, the Norris-LaGuardia Act. The Clayton Act forbade the issuance of federal injunctions to restrain certain enumerated labor union activities, and further declared these activities not to be "violations of any law of the United States." The Norris-LaGuardia Act narrowed much further the power of federal courts to issue injunctions in labor disputes. Mr. Justice Frankfurter observed: "The Norris-LaGuardia Act was a disapproval of Duplex Printing Press Co. v. Deering[37] . . . and Bedford Cut Stone Co. v. Journeymen Stone Cutters' Association,[38] as the authoritative interpretation of Section 20 of the Clayton Act, for Congress now placed its own meaning upon that section." The two cases mentioned had interpreted the labor immunities of the Clayton Act as extending only to immediate employer-employee relations, and not to sympathetic or jurisdictional strikes. The Clayton and Norris-LaGuardia Acts deal with labor injunctions, not with the criminal liability of labor unions or their officers, but they express the clear intention of Congress to place the normal activities of labor unions beyond the reach of the anti-trust statutes. They place the conduct of the present defendants clearly beyond the reach of any federal injunction. It is reasonable to assume that Congress also intended that such labor union activities should be immune from the criminal sec-

[35] Three cases dealt with N.L.R.B. procedure, especially its handling of the evidence supporting its findings of fact. These were International Association, etc., v. N.L.R.B., 311 U.S. 72, 1940; N.L.R.B. v. Link-Belt Co., 311 U.S. 584, 1941; Pittsburgh Plate Glass Co. v. N.L.R.B., 313 U.S. 146, 1941.

[36] 312 U.S. 219, 1941. [37] 254 U.S. 443, 1921. [38] 274 U.S. 37, 1927.

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tions of the Sherman and Clayton Acts. It would be very strange if "that which on the equity side of the court is allowable conduct may in a criminal proceeding become the road to prison."

Mr. Justice Roberts and Chief Justice Hughes dissented on the ground that the defendants had engaged in a secondary boycott which restrained interstate commerce. Under a long line of decisions, this violates the Sherman Act. If the Norris-LaGuardia Act is to be given the effect of repealing the criminal sections of the Sherman Act as applied to labor unions, this repeal should be by Congress and not by the Court.

A somewhat similar result was reached in Milk Wagon Drivers' Union v. Lake Valley Farm Products, Inc.[39] This case arose out of another jurisdictional labor dispute—an A. F. of L. versus C.I.O. controversy. An element in the conflict was the picketing by the A. F. of L. union of the stores in Chicago selling the dairy's milk. The Court held that a labor dispute existed within the meaning of the Norris-LaGuardia Act, even though it was between the dairy and an outside union. The act applies if the employers and employees involved are engaged in "the same industry, trade, craft, or occupation." Here they are all engaged in the milk industry. The Norris-LaGuardia Act is applicable to labor disputes and forbids the issuance of injunctions in them even when violations of the Sherman Act are charged. The act itself makes no such exception to its uniform application, and its legislative history clearly shows that none was intended by Congress.

2. FEDERAL TRADE COMMISSION ACT

In Federal Trade Commission v. Bunte Bros.,[40] the Court refused to allow the Commission to follow the doctrine of the Shreveport Case[41] and to forbid the use of unfair methods in local sales when these result in "a handicap to interstate competitors." The opinion was written by Mr. Justice Frankfurter. Bunte Brothers made and sold candy in Illinois in "break and take" packages, a scheme by which the amount the buyer gets depends on chance. The Commission had barred "break and take" packages as an "unfair method of competition" in interstate commerce. Bunte Brothers did not engage in interstate commerce; they merely competed with those who did. The Commission claimed for itself an authority similar to that exercised by the Interstate Commerce Commission in the Shreveport Case, where the Court upheld the Commission in ordering the discontinuance of purely intrastate railroad rates which resulted in discrimination against interstate commerce. The Court's refusal to sustain the Federal Trade Commission's claim rested on its conclusion that Congress has not granted this wide authority by any provision of the Federal

[39] 311 U.S. 91, 1940. [40] 312 U.S. 349, 1941.

[41] Houston, E. & W. Texas R. Co. v. United States, 234 U.S. 342, 1914.

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Trade Commission Act, and has also shown from time to time a disinclination to add in this way to the Commission's jurisdiction. "The construction urged by the Commission would thus give a federal agency pervasive control over myriads of local businesses in matters heretofore traditionally left to local custom or local law." This is very different from the "strictly confined authority growing out of railroad rate discrimination." So drastic a change in the Commission's powers should not be made without "a clearer mandate from Congress." "This case presents the narrow question of what Congress did, not what it could do." Justices Douglas, Black, and Reed dissented.

B. QUESTIONS OF STATE POWER

I. THE FOURTEENTH AMENDMENT

1. DUE PROCESS OF LAW

1. Civil Rights. In Cox v. New Hampshire,[42] a state statute requiring a special license with graduated fees for any parade or procession on the public streets was held not to abridge freedom of speech, press, religion, or assembly. The appellants, Jehovah's Witnesses, without obtaining a license, marched through a city street in groups of twenty in single file carrying placards to advertise a meeting. They appealed their conviction under the statute, alleging that it violated the fundamental civil liberties guaranteed by the Fourteenth Amendment, that it gave the licensing authorities unlimited, arbitrary, and discriminatory power, and that it was fatally vague and indefinite. Speaking through Chief Justice Hughes, the Court unanimously rejected all these contentions. On its face, the act is a reasonable police regulation designed to keep order and promote the safe and orderly use of the streets. "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses . . . One would not be justified in ignoring the familiar red traffic light because he thought it his religious duty to disobey the municipal command or sought by that means to direct public attention to an announcement of his opinions." As construed by the Supreme Court of New Hampshire, the act does not give "arbitrary or unfettered discretion" to the licensing board. The board is required to deal with each application for a license by a uniform procedure, a full examination of the facts, and without discrimination. The fee is a reasonable charge to cover the extra police service necessary to maintain public order. The record showed no abuse of authority by the licensing board in this case.

In 1940, the Court held in Thornhill v. Alabama[43] and Carlson v. Cali-

[42] 312 U.S. 569, 1941.

[43] 310 U.S. 88, 1940. See this REVIEW, Vol. 35, p. 268.

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fornia,[44] that laws forbidding peaceful picketing abridge freedom of speech and press. In Milk Wagon Drivers' Union v. Meadowmoor Dairies,[45] the Court divided sharply on the application of this general rule to the complicated circumstances of a milk-wagon drivers' strike in Chicago. The dairy sought an injunction to restrain the union from interfering with the distribution of its products. A master appointed by the court to find the facts reported that there had been considerable violence on the part of the strikers and recommended that all picketing, not merely violent acts, should be enjoined. This was ultimately done and the Court, in an opinion by Mr. Justice Frankfurter, sustained the injunction. This sweeping decree is justified on the ground that the acts of picketing were, according to the master, "enmeshed with contemporaneously violent conduct which is concedely outlawed." The violence was not "episodic nor isolated." "And acts which in isolation are peaceful may be part of a coercive thrust when entangled with acts of violence. In such a setting, it could justifiably be concluded that the momentum of fear generated by past violence would survive even though future picketing might be wholly peaceful." The Court denied that this decision qualified the doctrine of the Thornhill and Carlson cases. There, statutes which were bad on their face had to be dealt with and were held void. Here the picketing is enjoined only because it is intimately associated with violence under circumstances which give it a coercive effect.

Mr. Justice Black dissented in an opinion in which Mr. Justice Douglas concurred, and Mr. Justice Reed dissented separately. The disagreement turned mainly on conflicting opinions as to the facts. Mr. Justice Black thought that the record showed no evidence that the picketing was accompanied by violence or that the union officials had indulged in or encouraged violence. Such violence as did occur was not connected with picketing. The injunction, therefore, should restrain the violence, but permit peaceful picketing. Mr. Justice Reed declared: "If the fear engendered by past misconduct coerces storekeepers during picketing, the remedy lies in the maintenance of order, not in denial of free speech. . . . If picketing is prohibited here, the right maintained by Thornhill v. Alabama collapses on the first attack."

The right to picket was sustained, however, in American Federation of Labor v. Swing.[46] Here an outside union sought to unionize Swing's shop. The state court enjoined the picketing of the shop on the ground, among others, that there was no dispute between Swing and his immediate employees. The Court, through Mr. Justice Frankfurter, held that "a state cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between

[44] 310 U.S. 106, 1940. See this REVIEW, Vol. 35, p. 269.
[45] 312 U.S. 287, 1941. [46] 312 U.S. 321, 1941.

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employers and workers so small as to contain only an employer and those directly employed by him."

2. Criminal Due Process. Smith v. O'Grady[47] arose on the following facts. Smith, an uneducated person, was arrested for burglary. He had no lawyer. He alleged that he was persuaded to plead guilty to simple burglary, as he supposed, on the assurance that if he did so his sentence would be not more than three years' imprisonment. He was not shown a copy of the charge. He was then brought before a judge, summarily arraigned, and upon the prearranged plea of guilty sentenced to twenty years in prison. The charge actually brought against him had been "burglary with explosives." He again asked to see the charge, to be allowed to plead not guilty, and to be given counsel for defense. These requests were denied, and "within the hour" he was on his way to prison. The state court denied Smith the right to allege illegal imprisonment through habeas corpus and held that his only relief lay in applying to the state parole and pardon board. The Supreme Court held unanimously that if Smith's charges were true he had been denied due process of law, and that under the circumstances he could not be denied the right of habeas corpus as a means of bringing before the court the question of the alleged denial of his constitutional rights. A similar result was reached in *Ex Parte* Hull.[48] Here a Michigan state prison regulation required all documents in habeas corpus proceedings to be passed upon by various state officials, who, if not satisfied with them, might refer them back to the prisoner. This procedure was held to impair the prisoner's constitutional right to apply to a federal court for a writ of habeas corpus. The court, not the prison authorities, must decide whether the papers are properly drawn.

3. Police Power and the Regulation of Business. The state police power cases in the field of economic regulation may be dealt with briefly. The most interesting is Olsen v. Nebraska,[49] in which a unanimous Court, speaking through Mr. Justice Douglas, held constitutional a Nebraska statute fixing the maximum fees which may be collected by a private employment agency from an applicant for a job. Relying upon Nebbia v. New York,[50] it found no denial of due process of law, and thereby squarely overruled Ribnik v. McBride,[51] decided in 1928, in which the Court held invalid a New Jersey statute fixing the fees of private employment agencies.

Railroad Commission of Texas v. Rowan & Nichols Oil Co.,[52] following recent decisions in analogous cases, upheld a complicated order of the Commission "formulating a method for distributing among well owners

[47] 312 U.S. 329, 1941. [48] 312 U.S. 546, 1941. [49] 313 U.S. 236, 1941.
[50] 291 U.S. 502, 1934. See this REVIEW, Vol. 29, p. 45.
[51] 277 U.S. 350, 1928. See this REVIEW, Vol. 23, p. 92.
[52] 311 U.S. 570, 1941.

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the total amount of oil which it then allowed to be produced in the East Texas field." Three justices dissented. The case may be compared with that of the same name decided at the last term.[53]

Skiriotes v. Florida[54] upheld a state statute forbidding the use of deep sea diving apparatus for the purpose of taking commercial sponges from the Gulf of Mexico, or the Straits of Florida, or other waters within the territorial limits of the state. The act does not conflict with international law, nor with any treaty or federal statute. It does not deny the equal protection of the laws. It is a proper exercise of the state's police power, and the state may validly forbid its own citizens to take sponges with the aid of diving apparatus, even at points outside the territorial limits of the state.

4. Due Process in State Taxation. In Wisconsin v. J. C. Penney Co.,[55] the Court sharply divided in holding valid the Wisconsin corporate dividend tax of 1935, as applied to a foreign corporation. The tax in issue is described by the statute as a tax "for the privilege of declaring and receiving dividends, out of income derived from property located and business transacted in this state." The rate of the tax is two and one-half per cent of the amount of the dividends, and "such tax shall be deducted and withheld from such dividends payable to residents and non-residents by the payor corporation." In the case of corporations "doing business within and without the state of Wisconsin, such tax shall apply only to dividends declared and paid out of income derived from business transacted and property located" in Wisconsin. The company is a Delaware corporation. Its offices are in New York, and it there votes its dividends, which are paid by checks drawn on New York banks. It was alleged that for Wisconsin to tax these dividends was to tax transactions taking place outside the state, and therefore to deny due process of law. The majority of the Court, through Mr. Justice Frankfurter, held the tax valid. "The practical operation of this legislation is to impose an additional tax on corporate earnings within Wisconsin but to postpone the liability for this tax until such earnings are paid out in dividends." It is an "income tax on corporate income that is paid out." The jurisdiction of the state to tax depends on "whether the state has given anything for which it can ask return." This it has done "The substantial privilege of carrying on business in Wisconsin, which has here been given, clearly supports the tax, and the state has not given less merely because it has conditioned the demand of the exaction upon happenings outside its own borders. The fact that a tax is contingent upon events brought to pass without a state does not destroy the nexus between such a tax and transactions within a state for which the tax is an exaction."

[53] 310 U.S. 573, 1940. See this REVIEW, Vol. 35, p. 275.
[54] 313 U.S. 69, 1941. [55] 311 U.S. 435, 1940.

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A sharp dissent was recorded by Mr. Justice Roberts and concurred in by Chief Justice Hughes and Justices McReynolds and Reed. The payment of the dividends occurs outside Wisconsin and is wholly beyond the reach of Wisconsin law. To call the dividend tax a tax on income is a complete misnomer. If the dividend is income at all, it is income in the hands of the stockholder, not the corporation. If this is a tax on income, then "by this process any exaction can be tortured into something else and then be justified under an assumed name." The tax falls on "what lies outside the sovereignty of Wisconsin," and is a violation of the due process clause.

Continental Assurance Co. v. Tennessee[56] upheld under the due process clause the collection from the company of a tax on the privilege of doing business in the state. The tax was measured by the premiums on policies of insurance issued by the company while it was doing business in Tennessee. The state was allowed, however, to keep on collecting the tax measured by such premiums, even after the company had withdrawn from the state. The tax on the privilege of doing business in the state could properly be measured by the premiums collected during the entire life of the policies.

2. EQUAL PROTECTION OF THE LAWS

Discrimination against Negroes. Applying the doctrine of Norris v. Alabama,[57] the Court, in Smith v. Texas,[58] reversed the conviction of Smith for rape on the ground that he had been indicted by a grand jury from which Negroes had been excluded because of their race. It found the evidence of racial discrimination persuasive. In a county having a Negro population of over twenty per cent, only five out of 384 grand jurors serving over a period of eight years were Negroes. The jury commissioner explained that Negroes had not been summoned for grand jury service because "he was not personally acquainted with any member of the Negro race." This led Mr. Justice Black, speaking for the Court, to remark: "Where jury commissioners limit those from whom grand juries are selected to their own personal acquaintance, discrimination can arise from commissioners who know no Negroes as well as from commissioners who know but eliminate them. If there has been discrimination, whether accomplished ingeniously or ingenuously, the conviction cannot stand."

II. FEDERAL AND STATE RELATIONS

1. STATE REGULATION OF ALIENS VOID

In 1939, Pennsylvania passed an elaborate Alien Registration Act. It required the annual registration of aliens over eighteen, the payment by

[56] 311 U.S. 5, 1940.
[57] 294 U.S. 587, 1935. See this REVIEW, Vol. 30, p. 83.
[58] 311 U.S. 128, 1940.

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them of a small annual fee, the securing and carrying of a card of identity, and the showing of this card on the demand of police and certain other officers. A federal district court held the act unconstitutional as a denial of the equal protection of the laws, and as an encroachment by the state upon the power over aliens constitutionally vested in the federal government. It enjoined the enforcement of the act, and that judgment came to the Supreme Court on appeal. In 1940, however, before the case could be heard, Congress passed the federal Alien Registration Act, which covers about the same ground. The federal statute requires the finger-printing of aliens, but does not require them to carry cards of identity. Under these circumstances, the Supreme Court, in Hines v. Davidowitz,[59] declined to pass on the question whether the Pennsylvania statute would have been valid if Congress had passed no legislation on the subject. It confined itself to holding that the exercise by Congress of its power over aliens ousts the state from the field and invalidates the state statute. Speaking for the Court, Mr. Justice Black emphasized the supremacy of national law in the broad field of foreign affairs, of which the treatment and protection of the nationals of other countries form an important and delicate part. When Congress has acted in respect thereto, "the states cannot, inconsistently with the purpose of Congress, conflict or interfere with, curtail or complement, the federal law, or enforce additional or auxiliary regulations." The federal statute shows the intention of Congress to create "a single integrated and all-embracing system" of alien registration, and therefore the Pennsylvania statute must give way. Mr. Justice Stone dissented, joined by Chief Justice Hughes and Mr. Justice McReynolds. He agreed that Congress could set up an exclusive federal system of alien registration, but denied that it had done so. The Pennsylvania act does not conflict with or obstruct the federal statute and should be upheld as a valid exercise of the state's police power.

2. STATE TAXATION OF FEDERAL AGENCIES

The federal government acquired title to certain lands in Alabama upon which at that time taxes due to the state remained unpaid. The state asserted tax liens as attaching to some of these lands, and claimed an interest in others as the result of tax sales held by the county court after the United States had become the owner of the land. The United States brought suit to quiet title to the lands. This is the case of United States v. Alabama.[60] Relying upon the doctrine of Van Brocklin v. Tennessee,[61] that lands owned by the United States cannot be taxed by a state, the government sought to have the tax liens and tax sales held void. The Court, speaking through Chief Justice Hughes, refused to hold the liens invalid. The government acquired the land knowing that the tax liens existed and

[59] 312 U.S. 52, 1941. [60] 313 U.S. 274, 1941. [61] 117 U.S. 151, 1886.

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"we see no reason why the United States . . . should stand, so far as the existence of the liens is concerned, in any different position from that of other purchasers of lands in Alabama who take conveyance on and after the specified tax date." At the same time, the state cannot enforce the tax liens against the land in the federal government's possession, since proceedings cannot be taken against the United States without its consent. The practical result appears to be that the state cannot enforce the liens as long as the government retains title to the lands, but may do so as soon as the government sells them. The state's claim of interest in the lands based on the tax sales held after the United States had acquired title cannot be sustained, since a suit against property in which the United States has an interest is a suit against the United States, and without its consent, not here given, the county court could have no jurisdiction.

3. STATE TAXATION AND INTERSTATE COMMERCE

In six cases, taxes levied by states were alleged to burden interstate commerce unconstitutionally. In five of these, the state tax was held valid. The most striking of the group is Nelson v. Sears, Roebuck & Co.[62] It may be recalled that in earlier cases, of which Felt & Tarrant Mfg. Co. v. Gallagher[63] was the most important, the Court held that foreign corporations engaged in interstate commerce, but selling goods within a state through local agents and places of business, may be compelled by the state to collect the state use tax from the local purchasers. This doctrine is pushed much farther in the Sears, Roebuck case. The company is a New York corporation which carries on an interstate mail-order business, and which also operates retail stores throughout the country. In order to operate such retail stores in Iowa, the company entered the state as a foreign corporation in 1928, paid the required fees, and secured the necessary permit. It still retains this status under Iowa law. It also carries on from outside the state a substantial mail-order business with Iowa purchasers, a business having no direct connection with the retail stores. Iowa imposes a tax on the use in Iowa of tangible personal property at the rate of two per cent of the purchase price. The Iowa law provides further that every retailer having a place of business in the state and selling goods for use in the state "shall at the time of making such sales, *whether within or without the state*, collect the tax imposed by this act from the purchaser." This meant that Sears, Roebuck & Co. were compelled to collect the use tax from their customers, not only on the sales made in their retail stores in Iowa, but also on the company's interstate mail-order sales to Iowa buyers. The company contended that it could not constitutionally be required to collect the tax on this mail-order business, but protested that

[62] 312 U.S. 359, 1941.

[63] 306 U.S. 62, 1939. See this REVIEW, Vol. 34, p. 280.

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its refusal to do so would result, under the Iowa statute, in the revocation of its permit to operate its retail stores in the state. Speaking through Mr. Justice Douglas, the Court held the statute valid. The purchaser of the mail-order goods is in Iowa, and the tax is upon the use of the goods in Iowa. Therefore the tax does not fall on something outside the state's jurisdiction. To compel the company to act for the state in collecting the tax does not impose an unconstitutional burden upon it. It enjoys valuable privileges in Iowa, and "Iowa can exact this burden as the price of enjoying the full benefits flowing from its Iowa business." There is no discrimination against interstate commerce since the sales made within the state pay the same tax as these mail-order sales. Mr. Justice Roberts, joined by Chief Justice Hughes, dissented. He felt that the statute placed a direct and serious burden upon interstate commerce, since it imposed on the company the task of collecting the tax on some 1,200,000 mail-order transactions with some 300,000 Iowa customers each year. He also urged that the act violated the Fourteenth Amendment by taxing transactions outside the state. The Court reached the same result in Nelson v. Montgomery Ward & Co.[64] on substantially the same facts.

In Caskey Baking Co. v. Virginia,[65] the Court held that the company, operating a bakery in West Virginia but registered in Virginia as a foreign corporation, could be compelled to pay an annual license tax of $100 on each of its trucks for the privilege of peddling bread wholesale from those trucks to regular customers on regular routes. "The purely local business of peddling is what the act hits, and this is irrespective of the source of the goods sold. It is settled that such a statute imposes no burden upon interstate commerce which the Constitution interdicts."

In Department of Treasury v. Ingram-Richardson Mgf. Co.,[66] the state of Indiana was upheld in levying a gross income tax on the company's business of enameling metal in its factory in Indiana. The metal parts which were enameled were trucked into the state by the company for that purpose and were then trucked back again to out-of-state customers. The tax, however, was held not to fall on interstate commerce. A somewhat similar situation was involved, and the same result reached, in Department of Treasury v. Wood Preserving Corporation.[67] While the transactions were more complicated, the Court found that the company purchased railroad ties in Indiana and sold them in Indiana to railroad companies. It was held liable to the Indiana gross income tax.

In Best & Co. v. Maxwell,[68] a North Carolina tax was held to discriminate against interstate commerce. The company, operating a New York store, rented a sample room in a North Carolina hotel for several days, took orders from samples there displayed, and filled them by shipment direct

[64] 312 U.S. 373, 1941. [65] 313 U.S. 117, 1941. [66] 313 U.S. 252, 1941.
[67] 313 U.S. 62, 1941. [68] 311 U.S. 454, 1940.

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from its New York store. For this privilege it was obliged to pay the annual tax of $250 which the state levies on "every person or corporation, not a regular retail merchant in the state, who displays samples in any hotel room rented or occupied temporarily for the purpose of securing retail orders." Retail merchants in North Carolina pay an annual tax of $1.00 for the privilege of doing business. The Court held the $250 tax void. "The commerce clause forbids discrimination, whether forthright or ingenious." No situation appeared in which the tax would be paid by anyone but an out-of-state concern. "The freedom of commerce which allows the merchants of each state a regional or national market for their goods is not to be fettered by legislation, the actual effect of which is to discriminate in favor of intrastate businesses, whatever may be the ostensible reach of the language."

4. STATE POLICE POWER AND INTERSTATE COMMERCE

A California statute regulated the business of agents who sell "transportation over the public highways of the state"—or bus transportation. Such agent must secure a license, pay a fee of $1.00, and file a bond of $1,000 as a guarantee of the faithful performance of the transportation contracts which he negotiates. In California v. Thompson,[69] this act was held valid as applied to agents selling tickets for interstate bus transportation. In an opinion by Mr. Justice Stone, the Court found that Congress had passed no laws relating to the subject, and that the act did not obstruct or burden interstate commerce. "It is not shown to be other than what on its face it appears to be, a measure to safeguard the members of the public desiring to secure transportation by motor vehicle, who are peculiarly unable to protect themselves from fraud and overreaching of those engaged in a business notoriously subject to those abuses." In 1927, in Di Santo v. Pennsylvania,[70] the Court held invalid an almost identical Pennsylvania statute applicable to agents dealing in ocean steamship transportation. Justices Brandeis, Holmes, and Stone dissented. This decision is squarely overruled in the present case.

III. IMPAIRMENT OF THE OBLIGATION OF CONTRACTS

In Gelfert v. National City Bank,[71] the bank sought to foreclose a mortgage made in 1923. It secured a judgment in 1938 for $18,401.25, and at the foreclosure sale the bank bought the property for $4,000. It then asked a deficiency judgment of $16,162.12, covering the difference between the amount of the judgment and the sale price, plus taxes, fees, and expenses.

[69] 313 U.S. 109, 1941.

[70] 273 U.S. 34, 1927. See this REVIEW, Vol. 22, p. 104.

[71] 313 U.S. 221, 1941. This case is similar in principle to Honeyman v. Jacobs, 306 U.S. 539, 1939. See this REVIEW, Vol. 34, p. 277.

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If such a judgment were awarded, the mortgagor would have lost his property and would still have owed the bank all but about $2,000 of the original debt. He alleged that the sale price of $4,000 was "wholly inequitable and unconscionable," and sought the relief provided by a New York statute of 1938 which directed the court, on proper motion, in fixing the amount of a deficiency judgment to determine the "fair and reasonable market value of the mortgaged premises" and to deduct that sum from the amount of the debt unless the foreclosure sale price should be higher. In a unanimous opinion by Mr. Justice Douglas, the Court held that the statute of 1938 did not impair the obligation of the mortgage contract. The original formula for fixing the amount of the deficiency judgment is not fixed and invariable, and it "does not become so embedded in the contract between the parties that it cannot be constitutionally altered." The legislature may properly adopt a uniform rule to diminish the chance that a mortgagee will be paid more than once. The creditor is constitutionally entitled to no more than the full amount of the debt. The obligation of his contract is not impaired by a later state statute which so changes the rules for the collection of the debt as to reduce this chance of getting more than his contract calls for.

An Arkansas statute of 1935 provided that a sale of land for the non-payment of taxes should not be set aside because of "irregularities or informalities" of procedure prior to the sale. The object was to protect the titles of those buying such lands from the state, and to encourage people to buy them. In 1933, the state acquired certain lands for non-payment of taxes and sold them to one Wood. In 1937, the legislature repealed the act of 1935, and in 1939 Wood's title was attacked on the ground of procedural irregularities prior to the tax sale. In other words, Wood's title was good under the act of 1935, but not good under the act of 1937. In an opinion by Mr. Justice Roberts in Wood v. Lovett,[72] the Court held that the repealing statute of 1937 impaired the obligation of the sale contract under which Wood acquired his title. "The terms of a statute according rights and immunities to a vendee of the state are a part of the obligation of the deed made pursuant to it." This obligation the state has impaired. Mr. Justice Black, with whom Justices Douglas and Murphy concurred, held that the act of 1937 was a proper exercise of the state's police power to aid distressed land-owners. Purchasers of tax-sale land can obtain full compensation if the sale is later set aside for irregularity.

[72] 313 U.S. 362, 1941.

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First Session of the Seventy-seventh Congress, January 3, 1941, to January 2, 1942. The first session of the Seventy-seventh Congress witnessed much activity in both houses, resulting, however, mainly in appropriation measures and defense legislation. Most of the bills carried through to enactment were calculated to meet the expectations of the President as set forth in his annual message of January 6, 1941.[1] In that message, the President assured Congress that the "future and the safety of our country and of our democracy are overwhelmingly involved in events far beyond our borders. . . . The immediate need," he said, "is a swift and driving increase in our armament production." Before the session came to a close, joint resolutions declaring war on Japan,[2] Germany,[3] and Italy[4] were passed. Thus it was perhaps the most epoch-making and influential legislative year, for the future affairs of our people, of any since the "founding fathers" assembled in New York City on March 4, 1789, to start legislating under the new national constitution.

The *sine die* adjournment on January 2, 1942, brought to a close the second longest session in history,[5] during which time many major pieces of crisis legislation were enacted; the total amount of money appropriated set an all-time record (roughly 58 billions, of which all but 8 billions were for defense purposes); hearings on bills and investigations exceeded in number and volume those of any prior session, running to perhaps 100,000 pages of printed matter; the testimony taken before the House and Senate appropriations committees alone printed out 18,129 pages and 4,592 pages, respectively; the debates and proceedings in the House and Senate involved 10,427 printed pages of the *Congressional Record*, while speeches and remarks printed in the Appendix under the privilege "leave to extend remarks" involved 6,105 pages.

The work of the session was rather equally distributed throughout the year, unlike that of the previous year, when nearly all the business was transacted prior to June. This past year, both chambers were active straight through until the Christmas holidays, it being the close of a session, not of a Congress.

Organization. The political complexion of the House and Senate of the Seventy-seventh Congress, first session, changed little as compared with

[1] A law approved January 2, 1942, provided that the second session of the Seventy-seventh Congress should begin on Monday, January 5, 1942, and that the first session of the Seventy-eighth Congress shall begin on Monday, January 4, 1943 (P.L. 395, Seventy-seventh Congress).

[2] S.J. Res. 116; P.L. 328.

[3] S.J. Res. 119; P.L. 331.

[4] S.J. Res. 120; P.L. 332.

[5] The session extended over 365 days as compared to 367 days for the prior one.

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that of the Seventy-sixth.[6] The Republicans gained five Senators and lost seven Representatives, the Democrats lost three Senators and picked up five Representatives, and third parties lost two Senators and gained two Representatives. But that is not the whole story. There were 10 changes in the Senate personnel and 74 in that of the House. The chairmanships of nine standing committees of the Senate and 10 of the House were changed at the beginning or during the session.[7]

The changes mentioned affected the continuity of leadership in the two chambers very little. Any congressman who now enjoys the privilege of determining policy, regardless of whether or not he is a chairman, has long since been recognized and consulted. Naturally, each has a single vote, so long as he cares to exercise it; but voting in Congress and effecting what the program is going to be or what it is not going to be are entirely different things, and the latter prerogative is by far the more important; in fact, it is a negative veto. Only a few Representatives and Senators enjoy the prestige of determining the legislative program, and they are never "freshmen."

The organization around which the Democratic and Republican machines in the House and Senate were built changed little from that of the preceding Congress, and was as shown in the table on page 292.

Procedure: General Aspects. The procedure in the House and Senate varied little from that of recent years. The last two sessions were of unusual length, each being dragged out over an entire calendar year. Consequently much time was devoted to the debate of some bills. The following table gives categorically, for the last two sessions, the number of bills debated for three or more printed pages each of the *Congressional Record* by either the House or Senate. Obviously, bills not debated to this extent were not controversial, and no amendments, other than a few originating in committees, were offered to them. Nearly all other bills enacted, not accounted for in the table shown on page 293, were called up under unanimous consent and passed without objection.

[6] See *Official List of Members of House of Representatives*, Feb. 26, 1941, Seventy-sixth Congress, p. 15. The party divisions as of that date were as follows: In Senate: 66 Democrats, 28 Republicans, and 2 others; In House: 265 Democrats, 161 Republicans, and 6 others.

[7] The nine changes in standing committee chairmanships in the Senate were: McCarran to chairmanship of District of Columbia Committee; Hill, Expenditures in the Executive Departments; George, Finance; Connally, Foreign Relations; Van Nuys, Judiciary; Reynolds, Military Affairs; Schwartz, Pensions; Hatch, Privileges and Elections; and Byrd, Rules.

The ten changes in standing committee chairmanships in the House were: Cannon to chairmanship of Appropriations Committee; Moser, Census; McGehee, Claims; Gossett, Elections No. 2; Peterson, Elections No. 3; Kirwan, Enrolled Bills; O'Leary, Expenditures in the Executive Departments; Secrest, Library; Robinson, Public Lands; and Gavagan, War Claims.

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Office	*Democratic*		*Republican*	
	Senate	*House*	*Senate*	*House*
Vice-President Speaker	Wallace (Iowa)	Rayburn (Tex.)		
President Pro Tempore		Glass (Va.)*		
Floor Leaders	Barkley (Ky.)	McCormack (Mass.)	McNary (Ore.)	Martin (Mass.)
Whips	Hill (Ala.)	Boland (Penn.)	Austin (Vt.)	Engelbright (Calif.)
Assistant Whips		Ford (Calif.)		
Chairmen of Rules Committees	Byrd (Va.)	Sabath (Ill.)		
Chairmen of Caucuses	Barkley (Ky.)	Duncan (Mo.)	McNary (Ore.)	
Steering Committee Chairmen	Barkley (Ky.)	Cannon (Mo.)	No committee	Martin (Mass.)
Chairmen of Committees on Committees	(Steering Committee serves in this capacity)	Doughton (N.C.)	Nye (N.D.)	Martin (Mass.)

* Senator Harrison was President *pro tempore* until his death.

The total number of bills handled by the two houses in the two sessions was approximately the same,[8] with both chambers in session, respectively, nearly the same number of calendar days;[9] but the sittings this past year were not as long as those of the year before. The procedure was more "streamlined," particularly in the Senate, in spite of the fact that war was not declared on Japan until December 8, 1941. The proceedings printed out 21,846 pages of the *Record* in the third session of the Seventy-sixth Congress as compared to 16,532 this past year.[10]

[8] The House passed 1,127 bills in 1940 and 1,043 in 1941. The Senate passed 1,100 bills in 1940 and 886 in 1941.

[9] The House was in session 201 calendar days in 1940 and 210 in 1941. The Senate was in session 192 days in 1940 and 167 in 1941.

[10] The *Record* was streamlined with a three-column page instead of two. The Appendix this year consumed 6,105 pages.

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	76TH CONGRESS THIRD SESSION		77TH CONGRESS FIRST SESSION	
Pages Debated	*House*	*Senate*	*House*	*Senate*
3– 5	7	7	7	10
5– 10	25	13	20	14
10– 15	14	16	24	9
15– 20	12	3	9	7
20– 25	4	3	15	7
25– 30	14	4	9	5
30– 35	8	3	8	2
35– 40	4	4	3	2
40– 45	2	2	1	2
45– 50	2	1	3	1
50– 60	5	6	2	0
60– 70	4	1	1	2
70– 80	2	5	5	1
80– 90	1	1	0	0
90–100	3	0	1	0
100–125	2	3	3	1
125–150	0	2	1	1
150–175	0	2	2	0
175–200	2	1	1	1
200–300	3	0	1	0
300–400	1	2	0	1
400–500	0	0	0	0
500–600	0	0	0	1
600–700	0	1	0	0
Totals*	115	80	124	67

* These data are subject to slight error, but not as much as 5 per cent.

As shown in the above table, the House debated 124 bills for three or more pages in 1941, as compared to 115 during the previous year. The Senate debated only 67 bills for three or more pages in 1941, as compared to 80 during the preceding year. The House debated eight bills in both sessions for over 100 pages each, while the Senate debated only five bills that much in the current session and eleven in the previous one. The Lease-Lend Bill[11] was the measure discussed at greatest length by either body. The proceedings on that bill in the House, consuming seven days, filled 282 pages of the *Record*, and in the Senate, consuming eighteen days, filled 568 pages.

Senate Procedure. The procedure in the Senate was too often disappointing and not in keeping with the body's reputation for being independent and self-assertive. At times, practices were inexcusable, with the leader-

[11] H.R. 1776.

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ship shirking its responsibility. Perhaps at no time, too, in recent years has the attendance been so lax. On different occasions, business continued to be transacted even after a vote showed the absence of a quorum. That situation obtained on August 14 and 15 during the consideration and disposition of major legislation, including a bill involving over six and one-half billion dollars.[12] On those two days, the roll was called several times when a quorum could not be obtained, even after the transaction of business had been held up for one or two hours.

On March 20, when the Senate was considering the Naval Appropriation Bill, a vote was taken on the so-called Argentine Beef Amendment, showing yeas 32 (32 Dem.), nays 32 (9 Dem., 21 Rep., and 2 others). Vice-President Wallace was entertaining at a luncheon, and hence was not present to break the tie. Without objection, the Senate on March 24 approved a motion by Senator Barkley, the majority floor leader, to correct the roll-call to make the vote 33 to 32 in favor of the amendment—which was then ordered engrossed as a part of the Naval Bill.

House Procedure. The House surpassed all records in its use of special rules. On 58 occasions, it in effect suspended its rules by adopting a simple resolution in each instance setting up a special order of business (the immediate consideration of some particular bill).[13] The next highest number of special rules to be adopted in any one session was 48 in the third session of the Seventy-sixth Congress.[14]

The Rules Committee reported 67 simple resolutions (special rules) providing a particular procedure for the same number of legislative matters. Of that number, 58 were adopted, six were laid on the table because the bills for whose consideration they provided were called up under unanimous consent, and three were left pending at the end of the session. One resolution reported as early as March 30 and another on November 13 were not called up for consideration, in spite of the fact that both were highly privileged and took precedence over practically all other business. This illustrates that regardless of the prerogatives of the Rules Committee over House procedure, or of the privileged status of special rules,

[12] On August 14, during the consideration of H.R. 5412, First Supplemental National Defense Appropriation Bill, it at one time took nearly two hours to get a quorum. *Cong. Rec.*, 77th Cong., 1st Sess., p. 7299. On August 15, during consideration of S. 1840, Construction of Defense Highways, the Senate could not keep a quorum for the transaction of business, though it did not adjourn. Finally, it not only passed the Road Bill but called up and agreed to the conference report on H.R. 5412. During the day the Senate had six roll-calls, of which two were votes. A quorum was present for only two of the calls, but neither was a call for voting. *Ibid.*, pp. 7329–7332.

[13] Four rules merely waived points of order against four different bills.

[14] See this REVIEW, Vol. 33, p. 1038; Vol. 35, p. 289.

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the final determination of the program is lodged elsewhere, i.e., in the Speaker, the floor leader, and one or two other "leaders."

An analysis of these rules shows that of the 58 all but three provided for the immediate consideration of certain bills; 40 were open rules merely giving otherwise unprivileged bills the right of way for a hearing in the House. Fifteen were closed rules, of which four were granted solely to waive points of order against their respective appropriation bills. All but seven specified a maximum time for general debate of the particular bill (varying from one hour to three days),[15] which was to be equally divided between those favoring and those opposing the bill; 50 rules provided that the respective bills be read under the five-minute rule for amendments, immediately following the general debate, "and that thereupon the committee rise and report the bill to the House, with such amendments as may have been adopted." At that point the previous question was to be considered "as having been ordered" on the bill.

An examination of the records will show that the House passed all but four of the bills considered under special rules. Three were defeated[12] and one was laid on the table.[16] Fifty-three became law and the others are still in process of final enactment, with one exception, i.e., the Federal Aid Defense Highway Bill, which the President vetoed, and which was enacted in a different form. Thus the Rules Committee is not used solely as an agent of the majority party to clear the way for legislation desired by the Administration and the party.

Calendar Wednesday was invoked on six different occasions, with 17 committees receiving the call. Seven committees responded to the call, presenting 26 bills for consideration, all of which the House passed. The Judiciary Committee called up 10, and Merchant Marine and Fisheries disposed of five. The other committees responding to the calls were Agriculture, Foreign Affairs, Military Affairs, Post Office and Post Roads, and Public Lands.

The suspension of the rules procedure was used only a few times during the session. Less than a dozen bills were thus passed, and only one or two were of any particular importance. Significant is the fact that the Lanham Defense Housing Bill was defeated under this procedure when a two-thirds vote in favor was not forthcoming. But the bill was later called up under a special rule and passed.

Unanimous consent procedure, other than business on the Unanimous Consent Calendar, was rather popular. It was a common practice for

[15] Eighteen provided for 1 hour, one for 1½ hours, nineteen for 2 hours, five for 3 hours, two for 4 hours, one for 6 hours, one for 8 hours, one for 1 day and 1 hour. two for 2 days, and two for 3 days.

[16] H.R. 968, relative to cotton; H.R. 4228, wire tapping, and H.R. 3, detention camps for aliens.

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chairmen of the various committees to ask unanimous consent to take up a bill out of the regular order and proceed to its immediate consideration. Some days as high as 10 bills were passed after this fashion, and more were passed in this way than any other except from the Private Calendar and the Unanimous Consent Calendar.

The discharge rule was barely mentioned. No bill was called up under the procedure, and only 10 motions to discharge committees from further consideration of certain bills were filed, none receiving a sufficient number of signatures for entry on the Calendar of Motions to Discharge Committees.

Legislative Activity. A total of 649 public and private laws were enacted, of which 397 were public and 252 private. No public or private resolutions were enacted; under new regulations set up at the beginning of this Congress, all measures enacted (regardless of whether they were bills or resolutions) were designated either as public or private laws. Seven bills were left in conference, and many others on which one or the other of the two houses, or both, have taken action are still in process of enactment. The President vetoed 28 bills, making a total of 533 bills vetoed by him since he took office in 1933.

Appropriations. During the session, Congress surpassed all records in making appropriations—a grand total of $60,855,156,352.20 (including trust funds and permanent appropriations). Twenty-seven money bills enacted during the year provided for $55,855,842,108.20 of direct appropriations and $3,431,573,114 of contract authorizations, making a grand total of $59,287,415,212.20, not including trust funds and permanent appropriations. The direct appropriations exceeded the budget estimates by $1,559,305,080.88. The total of appropriations for the session more than doubled that of any other except the second session of the Sixty-fifth Congress (November, 1917–December, 1918). In that session, appropriations totaled $36,119,536,082. Of the direct appropriations, approximately fifty billions were for national defense and the other eight billions for nondefense purposes.

The 27 supply bills were truly committee products, yet the committees reported to their respective bodies measures carrying pretty much the amounts requested by the Bureau of the Budget. The budget estimates considered by the House totaled $52,961,539,360.17; the amount carried in the bills as reported totaled $53,351,799,656.36; and the bills passed provided for $53,349,224,171.87. The budget estimates considered by the Senate totaled $54,206,267,292.17; the amount carried in the bills as reported totaled $55,130,716,635.02; and the bills passed provided for $55,619,663,742.30. As finally enacted, these 27 bills appropriated $55,854,271,373.02,[16a] a sum greater than the bills totaled when they passed

[16a] Private and incidental funds total an additional $1,570,735.18, aggregating $55,855,842,108.20.

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either the House or the Senate. Thus, compromises in conference were made at the expense of the taxpayer.[17]

These bills accounted for much of the work of the session, keeping the appropriations committees extremely busy. At the hearings, testimony taken by the House committee printed out 18,129 pages and in the Senate committee, 4,592. The debates on these bills in the House printed out 1,117 pages of the *Record* and 437 pages in the Senate. Two hundred and sixty-three amendments were offered to the bills in the House, of which 25 came from the committee. Ninety-four were adopted, including all submitted by the committee. In the Senate, 1,067 amendments were offered to the House bills, of which 967 came from the committee. One thousand and sixteen of these were adopted, including 959 of those offered by the committee. Many amendments in both houses were lost in conference.

Legislation. In all, 2,519 bills and resolutions were introduced in the Senate and 7,016 in the House. Senate committees made 931 reports on legislation, and that body passed 886 bills. The committees of the House made 1,557 reports, and that body passed 1,043 bills.[18] The House and Senate took 80 and 93 roll-call votes, respectively, and when the session closed, 60 bills were pending on the House calendars and 40 on the Senate calendar.

Much important legislation was enacted during the year, with the voting in both chambers unusually nonpartisan. The two most discussed pieces of legislation of the session were the Lease-Lend Bill and the Repeal of the Neutrality Act; the votes on these two bills were as partisan as any, except for H.R. 2665, Reapportionment of Representatives, which was passed by strict partisan vote. The Lease-Lend Bill passed the House by yeas 260 (236 Dem., 24 Rep.), Nays 165 (25 Dem., 135 Rep., and 5 others), and the Senate by yeas 60 (49 Dem., 10 Rep., 1 other), nays 31 (13 Dem., 17 Rep., and 1 other).[19]

The procedure on the Repeal of the Neutrality Act (H. J. Res. 237) disclosed the Administration at the maximum of its effort to influence leg-

[17] For a thorough analysis of these appropriations, see *Appropriations, Budget Estimates, etc.*, by Marcus C. Sheild, Clerk to House Committee on Appropriations, and Everard H. Smith, Clerk to Senate Committee on Appropriations, pp. 1–1097.

[18] Each house played a more important rôle in legislative activity than the above figures show. Of the 1,043 measures passed by the House, 799 were House bills, 191 Senate bills, 35 House joint resolutions, and 18 Senate joint resolutions. During the session, 7,016 bills and resolutions were introduced in the House. Of that number, 6,297 were House bills, 261 House joint resolutions, 61 House concurrent resolutions, and 397 House resolutions. House committees made 1,557 reports. Of the 886 measures passed by the Senate, 397 were Senate bills, 436 House bills, 26 Senate joint resolutions, and 27 House joint resolutions. During the session, 2,519 bills and resolutions were introduced in the Senate. Of that number 2,163 were Senate bills, 123 Senate joint resolutions, 22 Senate concurrent resolutions, and 211 Senate resolutions. Senate committees made 931 reports.

[19] *Cong. Rec.*, 77th Cong., 1st Sess., pp. 849, 2144.

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islation. As originally reported to the House and passed by that body, the bill merely repealed Section 6, clearing the way for the arming of merchant vessels. The Senate amended the measure to repeal Sections 2 and 3 (relating to commerce with states engaged in armed conflict and relating to combat areas, respectively). During consideration of the bill in both chambers, pressure from the Administration to get the bill through in a particular form was very discernible. Comments and observations as to how the Administration felt about the matter were frequently made by the leaders in Congress, and letters and statements by government officials were quoted constantly. As amended by the Senate, the bill went back to the House, and instead of sending it to conference, a special rule was adopted to take up the Senate amendments immediately from the Speaker's table and act on them. To take this action without a special rule requires unanimous consent. The special rule to this effect, nevertheless, was adopted, and the amendments were called up and agreed to. The voting strength in the House in favor of the Senate amendments was doubtful at first. The leadership labored to assure victory; others worked for the amendments' defeat. One Representative opposing the amendments is alleged to have formed a block of 52 members against them. Before the vote was cast, however, he was called to the White House for a conference, and he ended by himself voting for the amendments. On the same occasion, an important Democratic boss spent part of an afternoon in the Speaker's office, calling in one Democratic Representative after another from his state for consultation. The location of many munition plants is said to have been changed on paper during this period, and judgeships were much discussed around the Capitol.

The bill passed the House originally by yeas 259 (219 Dem., 39 Rep., and 1 other), nays 138 (20 Dem., 114 Rep., and 4 others), and the Senate amendments were agreed to by yeas 212 (189 Dem., 22 Rep., 1 other), nays 194 (53 Dem., 137 Rep., and 4 others). The Senate passed the bill, as amended, by yeas 50 (43 Dem., 6 Rep., and 1 other), nays 37 (15 Dem., 21 Rep., and 1 other).[20]

The revenue measures were several and extensive. The Public Debt Act[21] increased the aggregate public debt limit to $65,000,000,000, gave the Treasury greater and more flexible control over savings bonds as a medium of financing, authorized the issuance of a new obligation called Treasury savings certificates in place of the war-savings certificates, and made certificates issued in the future subject to federal taxation. The Revenue Bill of 1941[22] increased taxes generally, raising approximately 3.5 billions annually. The Excess-Profits Tax[23] Amendments Bill of 1941 has two major purposes, as set forth in the House committee report: "Provide

[20] 77th Cong., 1st Sess., pp. 8250, 8907, 9116–9117.
[21] H.R. 2959. [22] H.R. 5417. [23] H.R. 3531.

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additional revenue urgently needed to help meet the costs of the national defense program, and second, to prevent the rearmament program from furnishing an opportunity for the creation of new war millionaires or the further substantial enrichment of already wealthy persons." All of these tax measures moved through Congress slowly, but with little display of partisanship.

Defense legislation, comprising most of the major legislation of the session, was hurried through, frequently without either debate or opposition, and hence with no roll-call votes. The bill keeping inducted men in the service for a period longer than a year[24] was much debated and bitterly contested in both chambers. It passed the House by yeas 203 (182 Dem., 21 Rep.), nays 202 (64 Dem., 134 Rep., and 4 others).[25] The vote in the Senate showed yeas 45 (38 Dem., 7 Rep.), nays 30 (16 Dem., 13 Rep., 1 other).[26] The Selective Service Act was amended in August to exempt from induction all males over twenty-eight,[27] and in December the act was amended again to register the man-power of America from eighteen to sixty-four.[28]

The Administration's proposal to requisition private property for national defense purposes was considerably modified by Congress before being finally enacted. The Senate report explained that the "substitute bill gives the President power to requisition, upon payment of fair and just compensation, military or naval equipment, supplies and munitions needed for national defense, and machinery, tools, and materials necessary for their servicing, operation, or production, when the government has immediate need for such property for the defense of the United States and has been unable to obtain it upon fair and reasonable terms by voluntary contract."[29]

The special committees created by the House and Senate, respectively, took endless testimony, but no major piece of legislation was enacted in pursuance of any of their findings. It was commonly agreed, however, that the defense program was improved on a number of counts as a result of publicizing its abuses or weaknesses.[30]

The Senate as a Council. The Senate received 11,485 nominations, of which 11,346 were confirmed, two rejected, seven withdrawn, and 130 unconfirmed. The number was the third highest handled by any one session. Procedure in the disposition of nominations was merely routine, in spite of the fact that several were of exceptional importance, e.g., Mr. Justice Stone to the post of Chief Justice, Robert Jackson and Senator

[24] S.J. Res. 95. [25] *Cong. Rec.*, 77th Cong., 1st Sess., p. 7227.
[26] *Ibid.*, p. 7036. [27] S. 1524. [28] H.R. 6215.
[29] 77th Cong., 1st Sess., Sen. Rep. No. 565, p. 2.
[30] Eight resolutions each were adopted in the House and Senate creating special investigating committees.

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Byrnes to associate judgeships in the Supreme Court, Frank Walker to the office of Postmaster-General, Dean G. Acheson to an assistant secretaryship of state, John G. Winant to the Court of St. James, Rex Tugwell to the governorship of Puerto Rico, and Francis Biddle to the post of Attorney-General.

Congress and the President. Congress seems to have fallen under more control by the Administration than in the past several years, perhaps more than ever before. By and large, the important measures of the session, including the appropriation bills, were sent to Congress by public letter addressed to some Representative or Senator, and introduced. The committees concerned held hearings on the measures, but most of the time in each instance was consumed by Administration officials testifying in support of the legislative or appropriation bills. Generally the testimony was presented convincingly, primarily because of the national emergency. The bills were then passed by each chamber nearly as reported. Should one chamber insist on writing in "undesired" amendments, such provisions were more than likely to be changed or wiped out by the other body, or at least modified in conference. Thus only a few paragraphs of legislation and hardly any entire public laws were finally enacted contrary to the will of the Administration. Of course, sometimes the various units of the Administration were in discord, at least not in accord, as to what a particular Administrative proposal should contain.

The control or influence of the Administration over Congress has been so great that even Representatives and Senators of the Democratic party have spoken out against it. Perhaps the most dramatic reflection to be found in the *Record* was uttered by Representative Monroney, member of the House Banking and Currency Committee, during consideration of the Price Control Bill (handled by the Banking and Currency Committee). He declared: "There is criticism attaching to the Gore Bill (a substitute for the committee bill), a blight that I am afraid may kill it, according to the popular conception on Capitol Hill, and that is that the Gore Bill originated in Congress. The Gore Bill was drafted by the gentleman from Tennessee (Mr. Gore) with the help of the congressional legislative drafting service, and no person other than members of Congress have had a hand in the direction and drafting of that bill. It is a bill designed to meet the situation and the evils of inflation."[31] Representative Randolph, chairman of the District of Columbia Committee, on the "American Forum of the Air" on Sunday, October 19, 1941, charged that he could not get hearings on his bill providing for a "Separate Air Force" because the President or the Administration would not permit the committee to hold them.

The Administration suffered no major defeats. A few compromises were

[31] *Cong. Rec.*, 77th Cong., 1st Sess., p. 9392.

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forced, but, by and large, the Administration "requested the legislation and got what it asked for."

The President vetoed only 28 bills, and no bill was passed over his veto. The Senate did override his veto of the Strategic Defense Highway Bill[32] by a vote of yeas 57 (41 Dem., 14 Rep., and 2 others), nays 19 (13 Dem., 6 Rep.), but the House failed in its attempt by yeas 251 (137 Dem., 111 Rep., and 3 others), nays 128 (88 Dem., 40 Rep.). Neither body called up any other veto message for consideration, all being merely referred to the appropriate committees. This does not mean, however, that there was no other opposition. In fact, a few vetoed bills were changed and reënacted, not to the complete satisfaction of the Administration.

On the other hand, Congress has been attempting to reach out its "arm of influence" over the Administration. Three laws enacted during the session contain clauses authorizing Congress, by the use of concurrent resolutions, to terminate the operation of the respective measures.[33] The constitutionality of such provisions has not as yet been weighed by the Supreme Court, but that body well might hold that concurrent resolutions of the nature indicated must have the signature of the President to be valid, in spite of the fact that through all the years the President has not been signing such resolutions.[34]

While only a few Administration measures were modified to any great degree against the will of the Administration, one must not overlook the changes made by Congress in the Lease-Lend Act,[35] the bill increasing the lending authority of the R.F.C. by 1.5 billions,[36] the first bill amending the Selective Service Act relative to age groups,[37] and the bill requisitioning property for defense purposes.[38] The bill authorizing wire-tapping was completely rejected by the House by yeas 146 (111 Dem., 35 Rep.), nays 154 (56 Dem., 94 Rep., and 4 others).[39] Congressional initiative to amend the labor laws as applied to defense work, directly or indirectly, was killed on several occasions. Several times the House resorted to the use of riders

[32] See S. 1580.

[33] Public Laws 11, 213, and 354. In discussing such a provision of the Lease-Lend Bill, Representative Dirksen, author of the amendment, stated: "What the President proposes to do, however, in the policy he proposes to establish will not be made manifest until that appropriation becomes law. Make no mistake about it. . . . There is one way of doing it and doing it now, there is one way for Congress to tie a string to this matter, and that is to provide in this bill that by concurrent resolution of the two houses, without the necessity of the signature of the President, we can reach out in case of excesses and abuses and take back the legislative power that is today being delegated." *Cong. Rec.*, 77th Cong., 1st Sess., p. 767.

[34] See Howard White, "The Concurrent Resolution in Congress," in this REVIEW, Vol. 35, pp. 886–889 (Oct., 1941).

[35] H.R. 1776. [36] H.R. 5667. [37] S. 1524.

[38] S. 1579. [39] H.R. 4228.

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on appropriation bills, and each attempt came to naught. But the House did pass before the end of the session a much opposed labor bill, which at the date of writing was pending in the Senate.[40]

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Discriminations in Federal Taxation of State and Local Government Securities. The battle over the tax-exempt security between the federal and the state and local governments has entered a new phase. Not content with merely taxing the income of new federal securities issued after March 1, 1941, the President, in his budget message to Congress of January 6, 1942, recommended legislation which would tax future state and local government securities, and the Secretary of the Treasury, in a speech in Cleveland on January 24, 1942, declared that it was high time to tax the income of outstanding issues as well. Up to this point, it had been the policy of the Administration to request only that the income tax be applied to future state and local government obligations.

The latest challenge of the Administration has not failed to evoke replies from spokesmen for the state and local governments. The Solicitor-General of New York State, Mr. Henry Epstein, has vigorously defended the practice of exemption and has contended that the application of the federal income tax to state and local securities would be economically unsound, unconstitutional, destructive of American political institutions, and detrimental to the national unity demanded by the defense efforts.[1]

Because the earlier proposals of the President and the Treasury to abolish the tax-exempt security by constitutional amendment received little encouragement in Congress, the Administration has sought to end tax exemption without an amendment. Steps were taken during 1941 to apply the federal income tax to the securities of the Port of New York Authority and the Triborough Bridge Authority. If this move should be upheld by the Supreme Court, the next step would be an attempt to tax directly the securities of the state and local governments.

A few years ago, many of the state and local government officials united in opposition to the Treasury program and organized a "Conference on State Defense." The governors of a number of states, the mayors of practically all large cities, and the attorneys-general of forty-five states condemned the proposed federal taxation of their securities. The opposition of

[40] H.R. 4139.

[1] The pros and cons of the tax-exempt security were recently debated by Mr. Epstein and Mr. Edward H. Foley, Jr., General Counsel of the Treasury, in the *National Municipal Review*, under the heading, "Shall We Tax Government Bonds?" See Vol. 30, pp. 674–688 (Dec., 1941).

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local officials has been voiced also through the American Municipal Association, the Conference of Mayors, the Municipal Finance Officers' Association, and various municipal leagues.[2] The active and widespread resistance of state and local government officials to the Treasury proposal to end tax exemption may be traced to the conviction that this plan would entail a number of fiscal and economic discriminations against the governments which they represent. These discriminations are of such importance in understanding the issues involved in the controversy over the tax-exempt security as to merit analysis. The federal advantages to be derived from ending tax exemption have been much publicized and are well known, but the disadvantages to the state and local governments have not been so fully appreciated.

Fiscal Discriminations. The original proposal of the Treasury to extend income taxation to future issues of state and local loans was offered in exchange for permission to the states to tax the income of new federal obligations. However, the local governments do not employ income taxes in any numbers and some fourteen states do not tax personal incomes, either because of constitutional restrictions upon progressive taxation or because of political resistance to such taxation. Some observers have argued that federal taxation would have the advantage of serving as an inducement to the states lacking income taxes to adopt them. State officials have replied that the states should be free to choose such forms of taxation as they may prefer, without federal coercion.

The extension of the federal income tax under the 1941 law to the lower income groups and the raising of the tax rates will obviously not give the states much incentive to lean more heavily upon income taxation. Moreover, if more states should adopt income taxes, and if the state income taxes should be levied at very steep rates, the federal securities would be increasingly taxed and the federal fiscal gains from abolishing tax exemption would be lessened by the higher interest costs ensuing.

The state income tax rates have been much lower than the federal, and they have not been high enough to obtain revenue increases as great, relative to the higher borrowing costs which would result from taxation, as the federal government would procure from the elimination of tax exemption. The maximum state income tax rates have been 15 per cent, found only in two states, as compared with a maximum federal rate of 81 per cent. With the federal tax rates as high as they now are, the states could not impose taxes of 50 or 60 per cent. Of course the federal debt is now in-

[2] The sources and nature of the state and local objections to the federal taxation of their securities were clearly indicated in *Hearings on the Taxation of Governmental Securities and Salaries* before the Special Senate Committee, 76th Cong., 1st Sess. 1939, and in *Hearings on Proposed Legislation Relating to Tax Exempt Securities* before the Committee on Ways and Means, 76th Cong., 1st Sess., 1939.

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creasing rapidly, and for a time at least, future federal issues will undoubtedly surpass new state and local issues, with the consequence that even if new federal securities alone become taxable, the income subject to state taxation will be greatly increased. State and local government debts, on the other hand, are generally tending to remain rather stationary. The net gains and losses to be derived by the states from giving up tax exemption would obviously vary with the amount of the taxable federal obligations, their own tax rates, and their higher borrowing costs as a result of federal taxation.

Where the state and local governments have weaker borrowing positions than the federal government, fiscal discrimination against them would result from the relinquishment of the tax-exempt security. The states and localities have a potentially lower borrowing capacity than the federal government because their revenue resources are more limited; they cannot exercise the same control over the banks and the currency system; and they cannot count upon the banks for almost unlimited amounts of credit.

The possible inequalities in interest rate advances which state and local governments would experience if their loans were taxed should be noted. Would the weakest governments—those localities with meager resources in the poorer sections of the country—have to submit to interest-rate increases greater than those encountered by the stronger state and federal governments? This the Treasury has inferred might happen. To allow for interest-rate advances above an estimated average interest-rate increase of 0.375 per cent for high-grade, long-term bonds, the Treasury added substantially to this sum to cover the unusually high increases "which might be incurred by communities with relatively poor credit standing."[3] It was thought that such communities might encounter increases as much as 0.65 per cent.

More light is needed upon the possible consequences to the interest costs of the stronger and weaker governments from the federal taxation of their securities. If, as Treasury officials and other witnesses in the Congressional hearings thought might happen, the localities with the weakest credit would experience the greatest interest-rate increases, the governments which already tend to pay the highest interest rates would be most handicapped.

State and local disadvantages in borrowing tend to be reflected in the interest rates at which they may borrow. Comparisons of the effective rates of interest on federal, state, and local loans, or the ratios of interest charges to the amounts of debt, are enlightening. The effective rates of interest on the total federal interest-paying debt fell from 3.50 to 2.58 per cent in the period 1932 to 1940 inclusive, while the effective rates of inter-

[3] *Hearings* before the Committee on Ways and Means, p. 47.

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est for bonds declined from 3.80 to 2.90 per cent, for Treasury notes from 3.11 to 1.25 per cent, for certificates and bills from 2.32 to 0.03 per cent, and for special issues from 4.00 to 3.02 per cent.[4]

The ratio of interest payments to the gross state general government debt in 1938 was 3.7 per cent. This ratio, which may be computed from census statistics, varied from state to state.[5] For cities of 100,000 or more population, the ratio of interest payments to the gross general government debt was 3.9 per cent in 1938.[6]

Further information concerning the rates of interest paid upon federal, state, and local debts has been assembled from federal documents by the Temporary National Economic Committee. While the effective federal interest ratio has recently hovered around 2.6 per cent, the combined state and local ratio in late years has been in excess of 4.1 per cent.[7]

Because they have paid higher rates of interest than has the federal government, the state and local interest payments are relatively larger. On a combined state and local gross debt of 20 billions in 1940, interest charges were approximately 800 million, or 4 per cent, while the federal government, on a gross debt of 42 billion, paid interest charges of 1,095 million, or 2.58 per cent.[8]

Interest rates have tended to decline recently, and the state and local, as well as the federal, governments have been able to obtain new loans and to refund some of their maturing loans at lower rates of interest. Future rates of interest are uncertain, but if past conditions are an index of future interest charges, there will be a tendency for state and local governments to pay higher rates of interest than those paid by the federal government, with its superior credit position. Where states and localities already suffer a disadvantage in comparatively higher rates of interest, a tax upon their credit will be relatively more burdensome than a tax upon the federal credit, unless this discrimination should be offset by other factors.

Various statistical guesses of the long-term gains and losses to the federal, state, and local governments from the taxation of the income of their future securities have been offered. These have not fully agreed upon the eventual results of taxation, but all have appeared to substantiate the conclusion that the federal tax gains would be larger than the higher federal interest costs resulting from taxation, while the aggregate increases in interest costs for the states and localities, as a group, would apparently

[4] Secretary of the Treasury, *Annual Report*, 1940, p. 68.

[5] Bureau of the Census, *Financial Statistics of States*, 1938, Tables 14 and 17.

[6] Bureau of the Census, *Financial Statistics of Cities*, 1938, Tables 14 and 22.

[7] The data were assembled for the period 1921–39. See Temporary National Economic Committee, Monograph No. 20, 1940 (*Taxation, Recovery, and Defense*), p. 219.

[8] From Bureau of the Census, *State and Local Government Debt: 1940*, pp. 15 and 31, and Treasury Department, *Bulletin*, Aug., 1941, p. 18.

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exceed the possible revenue gains. On the basis of the then current debt statistics, the Treasury estimated in 1939 that the federal tax gains from giving up the exemption of future debt issues would range from $179,000,000 to $337,000,000, as against increased interest costs of $19,000,000 to $50,000,000. State and local interest costs, it was estimated, would rise from $40,000,000 to $105,000,000, depending upon an increase in interest rates from 0.25 to 0.65 per cent. The margin between the minimum and maximum estimates reflected the uncertainty of the Treasury concerning the outcome. Spokesmen for the state and local governments have estimated that their interest payments would advance more than $100,000,000 if their future securities were exposed to federal income taxation.[9] These are all long-range estimates which require correction for changing debt conditions, but which may be cited for illustrative purposes. In his speech at Cleveland on January 24, 1942, the Secretary of the Treasury declared that the inability of the federal government to tax outstanding state and local obligations was now costing the government a loss of $200,000,000 annually in revenue.

The problem of estimating the fiscal consequences which would follow the federal and state taxation of the income from governmental securities is a highly difficult one because of the many variables involved. The amounts of future loan issues, future interest rates, conditions in the financial markets, tax rates, and other relevant factors cannot be foretold in advance. Interest rates are not determined solely by the presence or absence of tax exemption, a privilege which will be more attractive under certain circumstances than others.

The Treasury has thus far not hazarded a guess concerning the revenues which might be procured by the states from their taxes upon public obligations, because of "the lack of adequate data."[10] Professor Lutz has estimated, with respect to conditions in 1939, that the states would not obtain over $17,000,000.[11] A few years ago, Professor Hillhouse concluded that if sixteen selected states were to impose personal income taxes at an average of existing rates, only five of them would gain more in added income tax revenues than they would lose if interest rates advanced merely 0.25 per cent. If interest rates should advance as much as 0.5 per cent, only one state would enjoy a net gain.[12]

A number of observers have contended that the interest rates on state and local government bonds would rise at least 0.5 per cent if they should become taxable, and some have argued that they would rise from 0.75 to

[9] The various estimates were cited in *Taxation of Governmental Securities and Salaries*, a report of the Special Committee of the U. S. Senate, 76th Cong., 3rd Sess., 1940, pp. 4–5. [10] *Ibid.*, p. 4. [11] *Ibid.*, p. 5.

[12] A. M. Hillhouse, "Intergovernmental Tax Exemption," *Municipal Year Book*, 1939, pp. 345–381.

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1.0 per cent. The Treasury, it may be noted, has reported that the yield of its long-term Treasury bonds averaged about 0.4 per cent higher at the end of 1941 for the taxable as compared with the partially taxable bonds, the differential arising, it declares, from the longer maturity and the taxability of the former.[13]

Thus far the Treasury has not denied that on balance the state and local governments would suffer a net fiscal loss if governmental securities were taxed. Rather, it has suggested that the federal government would enjoy a net gain and that its gains would offset the net fiscal losses of the states and localities. It has thus implied that fiscal discrimination would result, so far as the over-all picture of state and local financing is concerned, but the states and localities have been urged to take their losses so that the federal government could take its gains.

The ire of many state and local government officials and of many investors has doubtless been aroused by the latest Treasury proposal to tax the income of outstanding state and local securities while continuing the exemption of those outstanding federal securities which were issued with the written promise of exemption. At the end of February, 1941, when new federal issues became taxable, there were approximately $52,700,000,000 of wholly or partially exempt federal securities.[14] While the Treasury has not promised that it would not ask for the taxation of outstanding state and local obligations, it has repeatedly stated, until Mr. Morgenthau's recent reversal, that the issue of tax exemption involved only future debt issues. The taxation of past debt issues would not increase borrowing costs of state and local governments for these securities, since the advantages of selling them at reduced interest rates have already been realized; but because of the general conviction that federal taxation was unlikely, the Treasury proposal will be looked upon in many quarters as violating a moral obligation which arose out of the prevailing interpretation of the constitution.[15]

The Sixteenth Amendment. The interpretation which the Treasury has offered of the Sixteenth Amendment to the Constitution conceals another potential discrimination against the state and local governments. It is argued that the amendment authorizes the federal taxation of income "from whatever source derived," and thus sanctions the federal taxation of the interest on state and local loans. The amendment does not declare, however, that the states and localities may likewise tax income "from

[13] *Bulletin* of the Treasury Department, Dec., 1941, p. 25, and Nov., 1941, p. 25.

[14] Secretary of the Treasury, *Annual Report*, 1941, pp. 46–48.

[15] The editors of the *New York Times* have been moved to denounce Secretary Morgenthau's proposal as "a highly controversial plan of doubtful constitutionality, cloudy ethics, and, by his own admission, likely to yield only a drop in the bucket of war-time needs." *New York Times*, Feb. 4, 1942, p. 18.

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whatever source derived." The staff of the Joint Committee on Internal Revenue has made this point clear.[16] If the states are to have the power to tax the income from federal loans under their personal income taxes, it must, therefore, be found elsewhere in the Constitution. A gross discrimination would arise if the federal income tax could be applied to state and local securities while the state income taxes could not be levied upon federal securities.

Property Taxation. If the taxation of governmental securities is to be truly reciprocal, the taxation should not be confined to one level of government and should not cause serious discrimination against certain governments for the benefit of another one. While the Treasury has been eager to apply its income tax to state and local obligations, it has not suggested a willingness to submit to state and local property taxes upon its loans. Yet, no other tax is available to local governments, in general, by which they might obtain income directly from federal securities.

Several states attempt to tax intangible property at the same rates as real estate, and many of the states endeavor to tax it at a rate of a few mills. Commonly the states have exempted their securities and those of their subdivisions because of the assumed advantages in lowered borrowing costs and the inability to tax federal securities. Data are not available to show the state and local revenues from intangibles taxes, which are presumably much less than real estate tax collections because of the lower rates and the common evasion. Many local governments, however, attempt to tax intangibles. The cities of 100,000 or more population secured some $20,000,000 from intangibles in 1937.[17]

Under favorable conditions, the localities, as well as the states, could obtain material revenues from the taxation of public securities as property. At a rate of four mills, each billion dollars of securities that could be taxed effectively would return $4,000,000. If new taxable federal debt issues should reach 50 billions, and they could be reached by a four-mill tax, they would provide the states and localities with 200 millions in new revenue. Of course the federal government does not collect intangible property taxes, but neither do the localities and a number of the states impose personal income taxes. An equitable fiscal arrangement, if the federal government wishes to place its income tax upon state and local loans, would permit the state and local governments to place their intangible property taxes upon federal obligations.

Progression and Regression. The Treasury has sought to eliminate the tax-exempt security because of the revenues it loses from its inability to tax state and local loans and the inequities in the distribution of income-

[16] *The Taxing Power of the Federal and State Governments*, a report to the Joint Committee on Internal Revenue Taxation, 1936, p. 62.

[17] Bureau of the Census, *Financial Statistics of Cities*, 1937, pp. 52–54.

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tax burdens which result from exemption. The states and localities have argued that federal revenue gains would be at their expense, and that the closer conformity with the principle of progression obtained with the extension of the federal income tax to their securities would probably be accompanied by the expansion of relatively regressive commodity and property taxes. The eighteen states which separated their personal income tax from their corporation tax receipts in 1940 reported collections from the former of 188 millions. Smaller amounts were procured in other states. Taxes upon commodities, among the forty-eight states, provided 1,647 millions, however, and property taxes supplied 265 millions. From motor vehicle licenses came 388 millions. Total state taxes, including those for unemployment compensation, yielded 4,171 millions. Personal income taxes thus returned only a small fraction of the total.[18]

In view of the fact that the federal government has practically pre-empted the personal income tax field, the further development of state personal income taxes is likely to be increasingly limited by their narrowing revenue possibilities. The state tax systems are predominantly regressive in their burdens, pressing down harder upon the lower incomes than upon the higher. Because of the traditional dependence of many of the states upon relatively regressive taxes for their major revenues, it seems probable that increases in borrowing costs which would accompany the federal taxation of their securities would be met from such imposts rather than from the personal income taxes of lesser importance. Highway bonds, which have recently accounted for over one-half of the gross state debt, may be financed with gasoline taxes with regressive effects. The costs of other loans may be financed with revenues from state enterprises which are collected at flat rates and with regressive burdens. If loans should be financed out of general state revenues, only a small part of the costs would ordinarily come from personal income taxes.

Local taxation is even more regressive in its burdens than state taxation because of the absence of progressive income and death taxes and the customary reliance upon property taxes for the great preponderance of revenues. According to Treasury estimates, 91.8 per cent of the local tax collections in 1938 were obtained from property taxes.[19] The inequalities in the assessments of property for taxation are notorious.

It is inconsistent with the principles of progressive income taxation to purchase an extension of progression in the federal tax system at a cost of greater regression in commodity and property taxes and other revenues in state and local revenue systems. By taxing the income of state and local obligations and raising the interest rates upon them, it is likely that the federal government would induce the states and the localities to resort to

[18] Bureau of the Census, *State Tax Collection*, 1940, p. 13.
[19] *Treasury Bulletin*, Aug., 1939, p. 4.

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revenues with regressive effects to meet the higher interest charges, since it would perhaps be only in exceptional instances that the larger state income tax collections resulting from taxing federal securities would offset the greater state and local borrowing costs. The rates of commodity and property taxes and the rates charged for water, gas, electricity, and transportation are not adjusted to the income status of the persons paying them, but are collected uniformly from the rich and the poor who are liable for them.

The relatively regressive components of the state and local revenue systems are the sources of most of their revenues as a rule, and they will probably continue to be of predominant importance because of the growing difficulties in the expansion of the progressive income and death taxes against federal competition. Unless the federal government is willing to share with the states and the localities the greater revenues it might obtain from the taxation of their securities as compensation for their higher interest costs, the increases in interest costs might frequently be met from revenues which would pinch the poorer elements of the population harder than the richer.

The regressive character of state and local tax burdens was strikingly illustrated by Mr. Leon Henderson in the hearings before the Ways and Means Committee on the 1941 Revenue Act when he compared federal, state, and local tax burdens and estimated the results which would accompany the enactment of the Treasury tax proposals, which were substantially incorporated in the new revenue law. The ratio of state and local taxes to personal incomes under $500 was 14.0 per cent, as compared with a ratio of existing federal taxes of 8.5 per cent and a new federal ratio which would obtain after the enactment of the Treasury proposals of 11.4 per cent. For incomes of $20,000 or over, however, the ratio of state and local taxes was only 10.6 per cent, as compared with a ratio of existing federal taxes of 32.6 per cent and a ratio of federal taxes after adopting the Treasury plan of 51.6 per cent.[20] It would be wise social policy to consider the regressive character of state and local taxation and of non-tax revenues in an analysis of the effects of federal taxation of the income of the securities of states and local units and the tendency for their borrowing costs to rise as a result of such taxation.

The state and local governments have further indicated that the public services for which they are borrowing are for the benefit of the masses primarily, since their debts have arisen mainly from the financing of public schools, streets and highways, sewers and sewage disposal, hospitals,

[20] From *Revenue Revision of 1941*, Hearings before the Committee on Ways and Means, 77th Cong., 1st Sess., Vol. I, p. 657. (These estimates do not allow for revenues from taxing governmental securities, since the Treasury did not include them.)

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charities, and recreation. These services tend to equalize the advantages of organized society among those of lesser and greater incomes. The wealthy may send their children to private schools, employ private physicians, and enjoy their leisure on their private estates, while the poor must place their children in the public schools, must use the public clinics, and must resort to the public parks for their recreation. The state and local governments have therefore objected to the taxation of their securities by the federal government in its campaign against the wealthy tax dodgers because they have felt that the poor would be penalized while the rich tax avoiders were being brought to justice.

Conclusions. In this paper, a number of discriminations which could arise from the application of the federal tax upon personal incomes to new state and local securities have been indicated. The states and localities are aware that the primary purpose of federal taxation is to swell the tax collections, but they contend that the additional revenues from this source would be relatively small, that they would be realized only gradually over a long period of years (unless outstanding securities were taxed), and that they would be purchased largely at the expense of increased state and local borrowing costs which would not be offset, on the whole, by the greater state income tax receipts from taxing governmental securities.

The tax-exempt security has been of as much interest historically to the state and local governments as it has been to the federal government, and it cannot be abolished without affecting their finances. For more than a century, it has been evident that the federal government and the states and localities have had conflicting interests in tax exemption. When the state and local governments, because of revenue advantages, have sought to tax federal securities, the federal government has objected that its borrowing power would be penalized; and when the federal government has endeavored to obtain additional revenues from state and local obligations, these governments have registered their opposition because of the unwanted increases in borrowing costs which would ensue and the fiscal losses which they would suffer.[21]

The present phase of the long-standing controversy over the tax-exempt security, with the state and local governments marshalling their forces against the proposed federal encroachment, can be understood only as one realizes that federal taxation would be disadvantageous to these governments unless they could share in the federal gains to an extent necessary to compensate them for their fiscal losses. Such a sharing has been unattractive to the federal government up to this point because it would

[21] The purposes of state and local borrowing are revealed in the publications of the Bureau of the Census, *Financial Statistics of States* and *Financial Statistics of Cities.*

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lessen the federal tax advantages.

In its argument that intergovernmental immunity from non-discriminatory taxation has no real constitutional foundation, the Treasury appears to have overlooked the possibilities of exposing the federal securities to state and local property taxes. If immunity from income taxation for governmental securities is not required by the Constitution, it would seem that immunity from property taxation is also not demanded. By applying their property taxes to federal securities, the state and local governments could obtain substantial revenues, but the withdrawal of immunity from property taxation would tend to raise interest rates upon the federal, as well as the state and local loans, and would thereby increase interest charges. Is the Treasury willing to have the federal securities exposed to property taxation? In advancing its arguments against the tax-exempt security, it should envision the logical conclusions which those arguments suggest and should show a willingness to accept the bitter along with the sweet, the losses along with the gains.[22]

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[22] In one of the most recent statements by a high Treasury official, it was reiterated that the doctrine of intergovernmental immunity from income taxes of a non-discriminatory nature upon public securities is without a constitutional foundation. No hint was given, however, that, if this argument is valid, immunity from non-discriminatory property taxes would likewise appear to be without a constitutional basis. See the article by Edward H. Foley, Jr., General Counsel of the Treasury, "Shall We Tax Government Bonds?," *National Municipal Review*, Vol. 30, pp. 674 and 681–688 (Dec., 1941).

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PUBLIC ADMINISTRATION

The Study of Public Administration. Emphasis on the study of public administration has in recent years become so marked that of all the fields in the study of government it stands out as the most rapidly growing. What Woodrow Wilson called attention to some fifty years ago[1] has in fact become the center of interest in political science. No longer is hard study confined to the problem of making constitutions. The study of administration has concerned itself extensively with the processes and procedures, with the ways of carrying out public policy. However, Woodrow Wilson's advice, recommending the careful determination of the basic political conceptions necessary for the student of public administration, has not always been followed; and the present note is designed to suggest some factors bearing on these basic political conceptions. Specifically, it is to be emphasized that the means through which the state carries on its functions cannot be adequately analyzed except in relation to its ends.

Two illustrations may help to make clear the nature of the problem which the student of administration faces. First, the tendency to minimize or overlook the differences between the problems of public and business administration is not without its difficulties. For certain purposes, this tendency is good, for it is not here implied that similar techniques cannot be useful in government as well as in business. However, to the extent that techniques condition the character of purposes to be attained, it is plain that use of the practices of business as a yardstick for measuring the methods of government is in need of reappraisal. For the ends of private business are not those of the democratic state. And means must be analyzed in the light of ends.

The second illustration is related to the first. A sharp line has often been drawn between politics and administration. Even where a relationship between the two has been formally admitted, there is still only a hesitant willingness to discuss the objectives or purposes of the state in studying administrative activity. The ends of public action are usually looked upon as outside the field of the administrator. Since he is concerned almost solely with means, to suggest that the purposes for which administration exists have relevance for the study of his work is frequently thought to violate this conception of his function. In fact, consideration of ends is thought to be made impossible by the suggestion that administration is a science.[2]

[1] "The Study of Administration," *Political Science Quarterly*, Vol. 2, p. 197 (June, 1887), reprinted in *ibid.*, Vol. 56, p. 481 (Dec., 1941). See also the valuable reappraisal of this suggestive pioneer essay by Marshall E. Dimock, "The Study of Administration," in this REVIEW, Vol. 31, p. 28 (Feb., 1937).

[2] See, for example, Edwin O. Stene, "An Approach to a Science of Administration," in this REVIEW, Vol. 34, p. 1124 (Dec. 1940).

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I

When Robert Lynd asks *Knowledge for What?*,[3] he raises a question that can effectively stir up both the preoccupied professor and the active administrator. The clues that he and others suggest for an answer have nowhere greater significance than in an examination of what public administration means. For it is in dealing with the context of modern living that the problems of administration, beyond mere structure and mechanics, begin to appear; and it is in the postulates which he suggests as the basis for study that the most crucial questions concerning state action are found.

It is not necessary to emphasize through detailed discussion how the interaction of physical and social factors has drastically changed the situations with which the individual must deal today. Because of the development of an interdependent society, the need for collective or coöperative action at many points becomes apparent. In fact, there is no alternative to formal and informal coöperation for the satisfaction of needs. As a consequence, areas of group action have become so inclusive that there remain few areas in which the individual can claim sovereignty. Thus, the search for meaningful experience becomes increasingly tied in with the development of organized activity. The individual's opportunities for participation in shaping the forces which control his life depend upon organized activity. Organization alone can provide the basis for the kind of experience which Lynd and others describe as creative. It is in these factors that the characteristics of the study of administration are to be found. For the administration of the affairs of the state is concerned with the preëminent form of group action.

To say that organized effort is important in the development of the individual is not to overlook the fact that large numbers of people have little or no opportunity for genuine participation in such organized activity. Because they find themselves confronted with a world of impersonal forces shaping their lives despite their best efforts, they turn especially to government in their search for a sense of security, a sense of belonging. To escape a disorganized economic and social world which provides little room for the realization of the basic desires of many human beings,[4] men place increasing reliance on governmental action. And herein exists the difficulty about which the student of administration must be clear.

The extensive creation of governmental services to meet needs that are apparent in any city, and more recently in rural areas, illustrates the

[3] (Princeton, 1939).

[4] The problem is well illustrated in Elton Mayo, *The Human Problems of an Industrial Civilization* (New York, 1933).

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problem in administration. The business of doing things *for* people has implicit in it an attack on the kind of self-reliance which is invaluable in any society that esteems human beings highly. Yet it is obvious that police protection, water supply, health service, housing, and many activities come within the range of public concern because no alternatives present themselves. The dilemma here is real and must be faced by students of administration.

Equally significant is the extension of public controls over many phases of economic life in recent decades. Both many liberals and Marxists[5] conceived of such extensions as appropriately arming the individual to contend with corporate giants around him. They sought in government the basis for a system of counter-powers in the liberal state to offset the concentration of economic controls in the hands of a small minority. They did not so clearly see, however, that they were not dealing with a problem in physics which demanded the balancing of one side of the scale against the other. They did not clearly appreciate that power, whether exercised by so-called private authority or by so-called public authority, had much the same meaning for those who exercised it, as well as for those who were affected by it. They were rather impressed with the apparent distinction between public and private, between political and non-political, authority, Without denying the existence of possible formal differentiations between the two, it is nevertheless important in administration to recognize that public and private power are similar, and even identical, in their meanings. But it is precisely in the recognition of this similarity, or identity, that a second dilemma appears. Power in the hands of government is not substantially different in its impact from power in the hands of so-called private groups.

The task of breaking through commitments to old symbols, to borrow the language of Gaus,[6] becomes most difficult with the realization that the extension of state power or the absorption of all power by the state has not automatically solved the problems of moving toward a better community. The state, whether liberal or Marxist, has as such not served to supply the new framework of reference for a larger sense of meaningfulness in the individual. Rather, it has in most cases been either an addition to other powers or a larger and more inclusive power to which the individual willy-nilly finds himself inescapably subject. The need for the development of new institutional frameworks, for new forms of organization, conceived as devices for making the individual more meaningful,

[5] See, for a recent statement, John Strachey's transitional program in *A Programme for Progress* (New York, 1940).

[6] "American Society and Public Administration," in John M. Gaus, Leonard D. White, and Marshall E. Dimock, *The Frontiers of Public Administration* (Chicago, 1936), p. 101.

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thus requires attention from the student of administration, particularly if the aims and objectives of the service state are to mean more than a shift in power from private to public hands.

More specifically, advance in understanding of the governmental process depends on an abandonment of the simple faith in forms which has too often characterized not only the reformer but even the revolutionary. To assume, for example, that the substitution of public for private ownership of a utility or banking system, or that the replacement of one governing élite by another, means an automatic step in the direction of a better society is to betray a dangerous lack of understanding of the significance of power.[7]

Stated positively, what is urged here is greater concern in the study of administration with its potential meaning for the achievement of a fuller democracy. As has been well pointed out by John D. Lewis, consent is the principal element of democracy.[8] But consent must operate increasingly beyond the areas which are now thought of as properly within the sphere of politics. It is not adequate to assume in the study of administration that the machinery of consent must be confined to the political level. In fact, to the extent that consent implies more than mechanical acquiescence in matters only of remote personal significance—to the extent that consent must rest on a genuine stake in the outcome of the process of choice—to that extent attention must be directed to those points in the workings of government where decisions are genuinely and obviously vital to the individual.

Here, then, is suggested a view to supplement that which concerns itself primarily with structure and mechanics in the study of administration. Likewise, the position here taken would go beyond that which looks upon the study of administration as concerned chiefly with the most successful exploitation of man-power, money, and materials, in the service of any master, for any purpose, subject only to the direction of politics. Rather, the study of administration must, it seems, become also, and perhaps especially at present, the study of the process of social change and of the means for making such change best serve the ends of a more truly democratic society. In the following are suggested two areas for further study of the process of administration in the light of what has been said.

[7] Attention is being given increasingly to the need for throwing off simple faith in the idea of automatic progress to a better social order. See, for example, Lewis Corey, "Marxism Reconsidered," *The Nation*, Vol. 150, pp. 245–248, 272–275, 305–307 (February 17, 24, and March 2, 1940); and Max Eastman, *Stalin's Russia and the Crisis in Socialism* (New York, 1940).

[8] "The Elements of Democracy," in this REVIEW, Vol. 34, p. 467 (June, 1940).

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II

Under the relatively primitive conditions of the police state, the processes of administration were intimately tied up with the courts. Law-enforcement involved essentially coercion of individuals by means of retribution for past actions contrary to public policy. The administrator's job under those circumstances was chiefly one of discovering who the lawbreaker was, what the lawbreaking action had been, and how a jury of the lawbreaker's peers might be convinced of his guilt. Coercion in this sense is supplemented today by new and more complex techniques.

Government seeks at present to control complicated processes through the application to them of equally complicated administrative techniques. Remote and impersonal experts are increasingly relied on to interpret public policies for the individuals whom they affect. The result has been, in many cases, one in which the individual finds himself compelled to follow complicated orders and directions without any clear understanding of their meaning or significance. Coercion in a new sense can thus emerge. For not only may the individual be cut off from knowledge of the process which affects him; he may also be vitally and helplessly dependent upon his own submission to the action of the administrator, as, for example, when such action has a direct relation to his health. Obviously, the expert in a position of power is indispensable, for only through the division of labor which his expertness manifests is it possible to deal with the complicated and technical interrelations of present-day living. Obviously, too, the threat to the affected human beings of the expert in power cannot be overlooked. The dilemma is only partially solved through political controls, since they too operate remotely, at the top. The problem of the student of administration is to direct inquiry toward implementing the concept of the citizen as participant in the process of government by means more significant than the suffrage, toward the discovery of what might be called coöperative methods of policy execution.[9]

From a slightly different point of view, coöperative methods of policy execution suggest the need for a determined search for the public interest.[10] Its discovery, among other things, depends upon the extent to which the administrator can call upon those affected by his action to assist in shaping administrative policy. Some such coöperation in search of the public interest takes the form of new mechanisms like the trade practice conferences of the Federal Trade Commission. On another level,

[9] The additional factor is not to be overlooked that it is sometimes quite futile to attempt simple coercion to get a job done. Thus, many action programs must come to rest on coöperation between official and citizen.

[10] For an illuminating discussion, see E. P. Herring, *Public Administration and the Public Interest* (New York and London, 1936), esp. pp. 334 ff.

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however, coöperation in the search for public interest, supplementing other administrative techniques, suggests an area for fruitful study in a new direction. What mechanisms exist, or can be developed, to create a genuine stake in the governmental process for the ordinary individual affected by it? What is meant to be emphasized here is the thought that the relationship between administrator and citizen must be viewed not alone as a momentary contact. Rather it must be considered as a continuing process, an interaction between affected citizens and administrators, out of which the public interest can become articulate. In this view, the focus of the study of administration becomes such that both official and citizen are considered as continuously related.

New administrative techniques might be examined in a number of agencies of government to discover what the forms and methods of coöperation in the execution of policy are. Can new techniques prevent the service state from creating merely additional power patterns? Among others, the Tennessee Valley Authority provides one of the most significant case studies, from which the following illustrative materials are cited[11] to suggest possible approaches for further study.

As a part of the task of water control, the T.V.A. is organized to get at rural insecurity. Such dramatic doings as the construction of dams receive, of course, first attention as central to the problem of the control and intelligent use of resources. However, reorganizing the economy of the Valley for a better life is a second, but by no means secondary, purpose of the T.V.A.

Coöperative execution of policy is central in the work of the T.V.A. Not only would it be impractical to attempt to maintain a formal administrative establishment large enough to do all that needs doing in the effort to conserve and use more intelligently the water and soil resources of the Valley. That fact in itself, however, does not constitute the principal reason for reliance on coöperation. Since the job of the T.V.A. is one of reorganizing the living of several million individuals to conform better to their whole environment, they must in a democracy be themselves participants in redirecting their own lives. It is at this point particularly that coercion fails, that the consent and active coöperation of those directly concerned must become the foundation of administrative action.

To create a new consciousness of the soil, the T.V.A. sought through coöperative methods to arouse interest in the desirability of doing something about the land. Two programs illustrate the methods used. Individual farmers were asked to study the characteristics of the land on their farms and to grade it according to its productivity. While an expert in

[11] For a more detailed description of some of the practices referred to below, see E. S. Wengert, "T.V.A. Enlists Local Coöperation," *Public Opinion Quarterly*, Vol. 1, p. 97 (Apr., 1937).

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soils might have undertaken the classification, the T.V.A. sought rather to initiate a coöperative approach to the problem of better organizing land use. Thus a foundation was laid for ultimately bringing lay farmer and soil expert together, not as only remotely related to one another, but as participants in the solution of a joint problem. The second illustrative program operated through county groups, organized into soil conservation associations. The T.V.A. sought out community leaders to show the way to their fellow-farmers through demonstrations of the possibilities of more intelligent practices. Thus was created a community interest in a common problem and a willingness to organize for its solution. Better planning and land use, collective ownership of heavy farm machinery, and the continuous application of the best knowledge to the problems in the small area of the county—all have grown out of the association of administrator and citizen, of expert and layman, in a new form of coöperative undertaking, an undertaking in keeping with the over-all program of the T.V.A.

In summary, the theory of organization in the T.V.A. emphasizes the consciously creative rather than the coercive. The complicated relationships between water, soil, crops, economics, and human beings are explored by men with skill and expertness who are, in the traditional sense, the administrators. In addition to these, however, individual inhabitants of the Valley take an increasing part in guiding the solution of these problems. In the operations of the T.V.A., "citizen" is redefined; the individual is made an official in a more important sense than Dewey's.[12] Not only is he a voter. He is an official in that, without title, without legal position, he nevertheless actively shares in making public policy concrete. All of this rests on a keen appreciation of the character of existing institutions and symbols, on their adaptation and redirection to new ends.

III

A second important area for further study in administration relates to the internal aspects of the administrative process. Particularly, the adequacy of traditional concepts, carried over from earlier times and different situations from those at present, might be reëxamined. It will be well to suggest some of the points at which further study might be appropriate.

The concept of hierarchy is related to command and obedience. The suggestion that lines of authority be drawn clearly, that each individual in an administrative structure know precisely whom he commands and whom he obeys, reflects the military origins of much thinking about hierarchy.[13] The essence of the army is force; implicit obedience is a useful

[12] John Dewey, *The Public and its Problems* (New York, 1927), p. 75.

[13] Not all thinking about organization is done in these terms. See, notably, John M. Gaus, "A Theory of Organization in Public Administration," in John M. Gaus, Leonard D. White, and Marshall E. Dimock, *op. cit.*, pp. 66–91.

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tool for making that force effective. But organization viewed from the standpoint of the military is not necessarily appropriate for solution of the problems of civil government.

The difficulty implied is aggravated when students of administration see in the experience of industry all the answers to the problems of public administration. It is not always clearly recognized that industrial administration continues to approximate more nearly in methods the administration of the army, or that it represents only a point between the relatively coercive methods of the army and the relatively non-coercive methods that must be used increasingly in civil administration.

In the practice of the army, as well as of most industry, organization functions chiefly as a limitation on individuals.[14] Only a portion of their energies is then directed into an enterprise. They are not called upon to contribute to it as individuals acting voluntarily, but rather they are commanded to do their duties. The business of living remains distinct from the business of working. In contrast, the desirability of recognizing the importance of "creative management" deserves emphasis.[15] Here, then, is suggested a basis for differentiating between the traditional pattern of military or industrial organization and the organization of the affairs of the state. This concept might be explored in a number of administrative agencies, where conscious effort is made to draw from the organization's members creative contributions to its purposes, as, for example, in the T.V.A.

Creative management involves extension of the notion that administration is an educative process to the relations within the administrative organization. Not only may the process educate those citizens affected by a policy; it may be an educational experience as well for those who direct it. The official then may act in a new rôle as teacher and as learner. This notion might be labeled "engineering of consent," with the understanding that there is implied no suggestion of manipulation, but only of the creation of arrangements conducive to the maintenance of consensual relations, both within and without the administrative structure.

In this view, the hierarchy no longer serves as a description merely of relations of command and obedience. It becomes, rather, what might be called a channel for communication—a mechanism through which intelligence moves from top to bottom and bottom to top. Two problems then emerge as worthy of further examination. The first has to do with the

[14] Even where the conditions of modern warfare demand individual initiative and ingenuity, the execution of military policy rests on the self-denial implicit in strict obedience.

[15] Ordway Tead, *Creative Management* (New York, 1935), and also the same author's *New Adventures in Democracy* (New York and London, 1939), esp. Chaps. 5. 9, 13.

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recognition of the importance of the individual employee in the process of communication; the second is concerned with keeping the channels of communication open, so that the superior or expert may be in touch with the whole of the staff, as well as with the individuals affected by its actions. Here the internal phases of administration touch on the external.

The most significant item in the suggested reappraisal of the meaning of hierarchy is probably to be found in the need for the creation for the employee of a genuine stake in the aims of the agency of which he is a part. Just as the citizen affected by government may be overwhelmed as easily by public authority as by private, so too the employee in a public agency may find his employment no more meaningful than in a private agency. In this area, the study of self-organization might be most suggestive, not only for its meaning in collective bargaining, but also for its bearing on the problem of realizing the greatest possible contribution of each individual to the aims of the organization. The communication of intelligence through the hierarchy may therein be substantially aided.

Relating the work of the superior or expert at the top to that of his subordinates constitutes another phase of the task of effective organization. At this point, the general staff function might be reëxamined for its possible usefulness in providing new mechanisms for communication. The general staff is most frequently conceived of as expediting the process of command. Thus is reflected its military origins. In addition, however, it might be possible to view the general staff function as a means for relating actively the top control of an organization to those directly engaged in the process of winning consent for its programs of action. Concretely, the representative in the field serves the purposes of his organization better to the extent that his ideas and reflections upon his problems can be effectively brought to bear on the policies of the whole organization. Even more: the element of remoteness, suggested above, as government undertakes increasingly difficult tasks and technical operations can be reduced in significance as the expert is made to respond to stimuli from the outside. The general staff may be useful in making such stimuli effective. For it is easy enough, as a rule, for the head to command the action of his subordinates; it is less easy by far for the subordinate to make available what he knows best and most intimately to the head. The result has been not only a loss in administrative effectiveness, but a destruction of potential strength in carrying out complicated programs democratically. This view clearly reëmphasizes administration as essentially a process of education.

From these considerations emerge a number of suggestions for study with particular reference to developing institutional patterns. The conception of the administrator-citizen provides a first clue to an understanding of the ways and means of getting around the dilemma of the

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liberal who is caught between private power on the one hand and public power on the other. A second clue is found in the participating employee who serves as a complement to the administrator-citizen. In fact, the distinction between the two is so difficult to draw that it must be recognized that the one can hardly come into existence without the other.

Discoverable institutional developments suggest the possibility of finding the basis for more meaningful democracy in which a self-conscious public begins to appear—self-conscious because of its stake in the process of government. Likewise the bewildering threat to democratic institutions, implicit in the need for increasing reliance on government by experts, is met as people begin to learn by doing the tasks of government in which they have a genuine stake. However, clues and suggestions are not enough. The student of administration is called upon consciously to direct attention to the possibility of perfecting, not merely better mechanisms as such, but better mechanisms adapted to democratic ends, in keeping with the best understanding of human beings and human institutions.

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International Administrative Regulation: The Case of Rubber. The war in the Pacific has focused attention on rubber as one of the key materials of peace and war economy. It has not only caused domestic adjustments in the United States as previously in other consuming countries, both allied and enemy, but has terminated an epoch in international rubber control. At the same time, it has accentuated the permanent international concern about basic materials—their location, accessibility, production, distribution, and utilization. Thus the international rubber régime, as it operated up to the disruption of trade-lanes and the invasion and devastation of producing areas, is of interest not only because of its effects in the period just ended but also as an approach to problems of international economic policy and administrative technique which are likely to continue into post-war world organization, no matter how different its political and strategical foundations may be.

Rubber is one of the materials which have become subject to governmental planning and administration on an international scale since the first World War. Others are tin, tea, and sugar. In all these fields, regulation has been established by agreements between governments, operated by international agencies, and implemented by domestic legislation of the participating governments. As international regulation, this differs from control of some commodity by an individual government within its national confines, such as the Brazilian coffee régime, or by several administrations under the same sovereignty, such as rubber control in several British dependencies prior to the international régime. Again, as intergovernmental regulation, it differs from systems under which commodities, although dealt with internationally, are controlled on the basis of private agreements between industrial organizations, and which are merely implemented by domestic legislation, as was the case with sugar under a previous régime.

The aim of commodity control through international governmental machinery thus far has been to regulate production of the commodity which is destined for international trade, and through such regulation to limit, but not to supplant, free enterprise and competition. Without going into the conflicting views on the merits, the inevitability, or the ultimate purposes of such regulation, it may be said that it was always adopted to cope with a definite economic situation, which was essentially similar in all these cases. Such a situation arose when production of the commodity expanded at a much faster rate than the demands of consumers or manufacturers, and when a readjustment of output to demand through free competition and elimination of marginal producers appeared either unworkable or detrimental.

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In each instance of intergovernmental regulation, however, the conditions which created or influenced this economic situation were peculiar to the commodity. Its uses, the location and methods of production, its rôle in the national economies of producing countries, and also the relationships between producers, distributors, manufacturers, and consumers at the time when the régime was set up have all affected the individual scheme of regulation. This is true also of rubber regulation under the Agreement of London of May 7, 1934.[1] The Agreement was concluded by the British, Indian, Dutch, French, and Siamese (now Thai) governments and operated by the International Rubber Regulation Committee, set up under its provisions. It has since been amended several times,[2] and revised and renewed in 1938 for a period ending December 31, 1943, unless renewed again.[3]

I

The over-supply problem of rubber which this régime was established to meet arose from conflicting conditions of its chief use for tires and its production mainly by plantations.[4] The conflict was one between demands which suddenly became inelastic and a producing system designed and financed for continued development. The ground for this conflict was laid with the sharp successive increases in the demand for tires in the first World War and with the advent of motor-car mass production in America. The resulting large-scale expansion of production depended on the plantation system, but left the bulk of the plantation output to be absorbed for a single manufacturing purpose.

With the saturation of the American automobile market about 1929, the requirements of tire manufacturers in this country became stationary.

[1] Agreement to Regulate Production and Exports of Rubber, May 7, 1934, League of Nations, *Treaty Series* 171: 204–222, Great Britain, Foreign Office, *Treaty Series* No. 12 (1934), Cmd. 4583.

[2] Protocols, June 27, 1935, May 22, 1936, and Feb. 5, 1937, League of Nations, *Treaty Series* 171: 222–228, Great Britain, Foreign Office, *Treaty Series* No. 12 (1936), Cmd. 5236, and No. 11 (1937), Cmd. 5384.

[3] Revised text, published in Declaration of H. M. Secretary of State for Foreign Affairs, Oct. 6, 1938, Great Britain, Foreign Office, *Treaty Series* No. 74 (1938), Cmd. 5901.

[4] For the economic background of the present rubber régime, see F. Arcoleo, "International Organization of the Rubber Market," *International Review of Agriculture* (*IRA*). 27: E 339–341, 1936; H. George, *Kautschuk* (Leipzig, 1938), 25–28, 98–102, 121–126, 146–161; A. Phillipson, *The Rubber Position and Government Control* (London, 1924); J. W. F. Rowe, *Studies in the Artificial Control of Raw Material Supplies: No. 2, Rubber* (London, 1931. Royal Economic Society, Memorandum No. 29); C. R. Whittlesey, *Governmental Control of Crude Rubber* (Princeton, 1931), Chaps. 1–2; H. and R. Wolf, *Rubber; A Story of Glory and Greed* (New York, 1936), Bk. III, Chap. 2.

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Abroad, the market for motor-cars and tires could not be greatly expanded without a considerable rise in the standard of living in leading countries, which did not materialize. On the other hand, the establishment of plantations would have been impossible without leaving the planted trees to grow untapped for years, as against the tapping at random of wild growing rubber trees. It also involved great initial investments for research, sanitation, and cultivation, made in view of continuing development. Moreover, the plantation system, together with the climatic requirements of the rubber plant, worked to concentrate production in a small number of humid tropical countries; and by its very expansion, rubber planting in the foremost producing countries grew to such a proportion of their national economies as to become indispensable for their continued prosperity. This was further accentuated when the absorption of increasing production encouraged additional expansion by small rubber gardens.

Under these conditions, the alternative to a regulated output would have been a steady growth of production, with prices dropping until enough producers were forced out of competition to restore the balance. Without a drastic and continued slump, plantations would prefer years of diminished returns, and even moderate deficits, on extended plantings to the loss of investments by abandoning cultivation. Such a slump, however, would entail huge losses for all operating plantations. It would also throw out of balance the national economies of countries which largely, if by no means wholly, depended on rubber production—notably British Malaya and the Dutch East Indies. It would even threaten to hamper an eventual new expansion of the tire industry, since prices would have to rise considerably before the acreage of planting would again be expanded on a large scale.

Regulation of rubber production was thus promoted by a very real coincidence of interests: the immediate concern of all competing plantations in avoiding a price slump; the long-range interest of manufacturers in a steady supply at stable prices; and the interests of a small number of governments in their national economies and revenues. Certain interests of a more controversial nature also were bound up with regulation. Restriction of production is apt to be viewed with favor by many producers for the sake of rising prices, but it may be disliked by consumers for the same reason. Furthermore, regulation tended to protect the rubber plantations; the native small holders do not depend on such protection, because for a living they can turn their acreage to other uses in bad times, while in good times they can more cheaply expand it without restriction. Regulation also tended to protect the existing ownership of plantations against newcomers; in the case of rubber, in particular, it safeguarded British

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and Dutch planters against being bought out or supplanted by American interests.[5]

Since virtually all production of rubber is for export, the regulation scheme finally adopted in 1934 centers on a limitation of exports, with some additional provisions on stocks and planting areas. It covers the British dependencies of Malaya, Burma, Ceylon, India, and Sarawak; also the Netherlands East Indies, French Indo-China, and Thailand.[6] Exports from these territories are restricted by flexible contingents, which are defined by percentages of fixed annual basic quotas. The basic quotas are laid down for each year and each participating territory in the Agreement for its duration.[7] Determination, from time to time, of uniform percentages that are to constitute the permissible exportable amounts of each territory is left to the International Rubber Regulation Committee.[8] Full flexibility of exports is assured by keeping the exportable amounts unpegged to any definite standard, such as the pivotal price which governed export contingents under the previous intra-British scheme, the Stevenson plan.[9] Moreover, if exportable amounts are unfilled or exceeded by actual net exports, the differences are transferable within certain limits to the following annual amounts.[10] Exceptions from this scheme of uniform percentages are provided for Thailand, to which minimum exports are conceded, and for Indo-China, which is exempt from percentages, subject only to specified deliveries from her exports to the Committee; also since 1938 for Burma, excepting her exports to India from her permissible amounts.[11] In order to keep production down to the requirements of

[5] The conflicting viewpoints are reflected in an extensive literature. See, on the one hand, C. F. Dawn, *The Future of Rubber: Whither and How* (London, 1934), 13–15; H. Hoover, "Fundamental Aspects of the Situation," in U.S. Department of Commerce, Bureau of Foreign and Domestic Commerce, *Trade Information Bulletin* No. 385, 1–18, 1926; R. F. Martin, *International Raw Commodity Price Control* (New York, 1937), 14–15; G. H. Seybold, "Rubber Restriction Wabbles," *The Rubber Age, New York* (*RA. NY.*) 38: 269–270, 1935–36; F. J. Thompsett, "Should International Rubber Regulation Be Renewed?," *The Rubber Age, London* (*RA. L.*), 18: 183–184, 1937–38; Wolf, *op. cit.* See, on the other hand, "Rubber Restriction Plan Enters Second Month" (report on views of F. R. Henderson), *RA. NY.* 35: 177, 1934; A. B. Tatistcheff, "Rubber Restriction Holds" *RA. NY.* 38: 268, 1935–36; "Sir Herbert Wright Talks on Restriction," *RA. NY.* 39: 110, 1936.

[6] Art. 1, revised in 1938.

[7] Art. 4(a); table of quotas amended by Protocols of June 27, 1935, May 22, 1936, and Feb. 5, 1937 (*supra* note 2); revised in 1938 for the second five-year period.

[8] Art. 4(b) (c); revised, as Art. 4(c) (d), in 1938.

[9] Committee Appointed by the Secretary of State for the Colonies to Investigate and Report upon the Present Rubber Situation in British Colonies and Protectorates, *Supplementary Report*, Oct. 2, 1922, Cmd. 1756, Recommendations, esp. Nos. 2–4.

[10] Art. 5(1) (2), amended in 1938.

[11] Arts. 4(b), 6; revised as Arts. 4(b) (c) (d), 6, in 1938.

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such regulated exports, the Agreement also determines flexible limits for the keeping of stocks in many participating territories[12] and prescribes maximum areas for new planting and replanting.[13] It also provides for the issue of certificates of origin and other implementing measures by the member administrations [14]

The working of the whole scheme of production regulation thus turns on decisions of the International Committee, which is charged with fixing the actual export quotas in the proportion of the basic quotas and thus determining the total volume of regulated exports and, indirectly, of production.[15] In addition to this central function, the Committee has certain other powers to regulate export and output. It may dispose of rubber delivered to it from Indo-China under her special régime; since 1938, it may also vary, within certain limits, the percentages of the planted area of each territory on which new planting is permitted.[16] Auxiliary functions of the Committee concern its internal administration.[17] Other auxiliary functions include centralizing information and publicity, maintaining contacts with member administrations, and making recommendations to signatory governments.[18] It may make such recommendations not only within the framework of the Agreement, but also on the subject of renewing and amending the Agreement itself. Indeed, renewal of the Agreement beyond 1938 depended, and beyond 1943 it again depends, upon such recommendations being made by the Committee and accepted by the signatories under a special procedure. Since 1938, recommendations for amendments may also be made at any time during the life of the Agreement, although these may affect the basic quotas and voting strength of members only in cases of accession of outsiders.[19]

The Committee to which these far-reaching powers have been granted is composed of delegates of the member administrations. Representation and voting strength of the administrations is unequal, being designed to correspond as closely as possible to the different producing capacities of

[12] Not in Burma, India, parts of Malaya (Singapore, Penang), Sarawak, Indo-China (until 1938), and Thailand.

[13] Arts. 11, 12, revised in 1938.

[14] Arts. 9 and 10 (certificates of origin), 13 (no exportation of portions of rubber plants), 14 (prevention of smuggling), 16 (contributions to expenses of the International Committee), 19 (coöperation on research); Arts. 9, 13, 16, 19 were revised in 1938. See also Art. 21, added in 1938 (right of signatories to suspend their participation).

[15] Art. 4(b); revised, as Art. 4(c), in 1938.

[16] Art. 7; Art. 12(b) (c) as revised in 1938.

[17] Arts. 15(e) (g) and 18 (appointments, elections, etc.), 15(o) (budget and statement of account), 15(p) (rulings on procedure).

[18] Arts. 15(j); 17; 19(i) as revised in 1938; 3(c)–(g), revised, as Art. 3(c)–(i), in 1938.

[19] The special régime for Indo-China may not be affected at all.

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their territories, yet to secure a manageable size and clear-cut procedure for the Committee. Thus, each territory has one vote for every complete 1,000 tons of its annual basic quota. But the membership of the Committee is fixed permanently, totaling fourteen at first and increased to seventeen in 1938, with delegations ranging from four members down to one; and each delegation is to cast its votes as a unit through one of its members.[20]

Most major decisions depend upon a majority of three-fourths of the total votes of all delegations entitled to vote. This qualified majority is required not only on the all-important issue of fixing or varying the export percentages of the basic quotas; it extends also to rules of the Committee's procedure, and since 1938 to permissible new planting and replanting, the rate to be levied on exports for the support of research, and recommendations on amendments to the Agreement in the course of its duration. A simple majority of the votes cast is sufficient for other decisions, including recommendations for amendments at the renewal of the Agreement.[21]

The Committee is assisted by an Advisory Panel, representing the rubber manufacturers. The functions of this body, however, are limited to advising the Committee from time to time on matters affecting manufacturers' interests, especially world stocks, export quotas, and new planting and replanting. Membership of the Panel, originally fixed at three, is now increased to four.[22] The members are nominated by organizations invited for this purpose by the Committee.[23]

II

To understand the working of this international régime, we must consider the International Rubber Regulation Committee in action. We must also consider the relations of its actions to acts of member administrations and producers in their territories, of outsiders, and of the manufacturing interests.

The interplay of governments and business interests in the operation of the rubber régime, on both the international and national levels, was foreshadowed by the methods by which the International Committee came into being. The Agreement establishing the Committee was concluded by five governments and made binding upon the administrations of the eight territories covered by it. But its provisions actually embodied an understanding previously reached by producers. Negotiations were conducted first by British and Dutch producers with the backing of their govern-

[20] Art. 15(b), revised in 1938; 15(k) (l). The number of substitute members is also fixed on a permanent scale.

[21] Art. 15(n). Special provisions for votes of the delegation from Indo-China: Art. 15(n) (2), revised in 1938.

[22] Including originally one and now two American representatives.

[23] Art. 18, revised in 1938.

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ments, and they were finally joined in by representatives of the minor producing countries.[24] Their progress depended in the first place upon the getting together of the British and Dutch interests, lack of which brought them to a temporary standstill in 1932, just as in 1922 it had thrown back the British to the Stevenson restriction plan[25] and contributed to its ultimate failure and abrogation in 1928.[26] The agreement which was signed by all producers' representatives on April 28, 1934, was submitted by them to their governments with the request to give legislative effect to it. It was followed closely by the draft of the British government, which was adopted within ten days by all signatories.[27]

The factual collaboration of governments and producers which was thus inaugurated was to some extent reflected in the Committee's composition. Of its members, the majority were taken from civil servants, including the chairman chosen by the Committee.[28] A minority was appointed from members of agency houses, which are close to the rubber-growing interests, while investors and traders were not represented and manufacturers were confined to the Advisory Panel. The members of the Panel were nominated by manufacturers' associations of the United States, Germany, and Great Britan.[29]

Beyond matters of its own organization and internal administration and services of information,[30] the work of the Committee from the outset centered on the determination of amounts exportable from member territories. In the language of the Agreement, the Committee from time to time fixed the variable percentages of the conventional basic quotas. But since both the percentages and the periods for which they are valid were left by the Agreement to the Committee's discretion, its action in fact

[24] George, *op. cit.*, 162–163, contrasting these negotiations with unsuccessful preceding attempts of producers at regulation without governmental action.

[25] Committee Appointed by the Secretary of State for the Colonies (*supra*, note 9), *Report*, May 19, 1922, Cmd. 1678, Nos. 11, 16–18, and *Supplementary Report*, Oct. 2, 1922, Cmd. 1756. Nos. 1–6.

[26] Arcoleo, *op. cit.*, *IRA.* 27: E 344–350, 1936; George, *op. cit.*, 139–142; Phillipson, *op. cit.*, 33–36; Rowe, *op. cit.*, 43; Wolf, *op. cit.*, 229–232.

[27] Rubber Growers' Association (RGA.), "Communiqué," Apr. 29, 1934, *Rubber Growers' Association Bulletin* (*RGAB.*), 16: 177–178, 1934. Cp. H. de Leeuw, "Dutch Plantation Interests Elated Over Restriction Announcement," *RA. NY.*, 35: 71, 1934; Wolf, *op. cit.*, 233; "The International Rubber Regulation Committee and Its Work," *RA. L.* 18: 386, 1937–38.

[28] Sir John Campbell (also chairman of the International Tin Committee); see International Rubber Regulation Committee (IRRC.), "Communiqué," May 9, 1934, *RGAB.* 16: 239–240, 1934.

[29] IRRC., "Communiqués," May 9, June 26, and Oct. 30, 1934, *RGAB.* 16: 239–240, 315, 661, 1934. Cf. Thompsett, *op. cit.*, *RA. L.* 18: 183–184, 1937–38.

[30] IRRC., "Communiqués," June 26, 1934 (organization of work, preparation of statistics), Jan. 30, 1935 (publication of the Statistical Bulletin, London, monthly, since 1935), *RGAB.* 16: 315, 1934, 17: 3, 1935.

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ELECTRONIC REPRODUCTION PROHIBITED

amounted to free determination of the total volume of exports for freely determined periods, with only the ratio of their distribution among member territories laid down in the Agreement. This goes beyond executing a policy established in a convention and possibly modifying and adapting it to changing conditions. It implies the formulation by the Committee itself of the policy to be applied to the market situation at any time. The Committee had to establish the facts of the market situation with which it had to deal, to agree on the standards it was to maintain, to fix its resulting policy in terms of quota percentages and dates, and to control the conformity of actual exports with them.

In fact, the Committee based its decisions on estimates of future absorption figures. It derived its estimates from statistics gathered by its own staff of statisticians, which in turn rested on official statistics of the member administrations;[31] it also considered statistics collected independently by business firms and associations and made available to the Advisory Panel.[32] However, it never fixed its policy as to how to correlate export figures with these absorption forecasts. That is to say, it formulated no standards to give definite meaning to such terms as "a normal figure" of world stocks, "an orderly manner" of adjusting supply to demand, and a price both "fair and equitable" and "reasonably remunerative to efficient producers," by which the objectives of regulation are adumbrated in the Agreement.[33] With few exceptions,[34] the Committee's practice was simply to announce what percentage and period were decided upon each time.[35] Moreover, from the first it reserved its right subsequently to alter its decisions; and several times it revised the percentages once decided upon.[36] Yet its decisions were not based only on administrative fiat. Quite apart from its prescribed consultations with the Advisory Panel, it has become known in at least one case that a quota decision involving a reversal of policy was preceded by unofficial negotiations with a deputation representing American manufacturers, who were interested in this reversal as easing the flow of supply.[37]

While the Committee's policies were kept flexible and for the most part unexpressed, they can nevertheless be gathered from its infrequent state-

[31] Communicated under Art. 17(b) of the Agreement.

[32] *Loc. cit.*, *RA. L.*, 18: 387, 1937–38. [33] Preamble, revised in 1938.

[34] IRRC., "Communiqués," May 9, 1934, Jan. 26, 1937, July 5, 1940, *RGAB.* 16: 239–240, 1934, 19: 3, 1937, 22: 163, 1940. Cf. *infra.* notes 38, 47.

[35] Letter of the secretary of the IRRC., quoted by Arcoleo, "The International Rubber Agreement, 1938," *IRA.* 30: E 391, 1939.

[36] IRRC. "Communiqués," Feb. 26, Mar. 26, Sept. 24, 1935; Oct. 27, Dec. 15, 1936; Jan. 26, Mar. 16, 1937; May 16, July 25, Sept. 9, Oct. 3, 1939; July 5 and Sept. 9, 1940; *RGAB.* 17: 63, 102, 377, 1935, 18: 432, 526, 1936, 19: 3, 85, 1937, 21: 324, 412, 505, 1939, 22: 163, 208, 1940.

[37] See "An American Storm Brewing," *RA. L.* 18: 73–74, 1937–38.

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ELECTRONIC REPRODUCTION PROHIBITED

ments of governing reasons and from the decisions taken in the course of widely varying market developments. Generally, it appears that these decisions were not made with a view to equalizing exports within definite periods with the estimated absorption minus eventual surplus stocks. Maintenance of a definite price level has been an important,[38] but often not the governing, consideration in determining the export quotas. At the beginning of regulation, the Committee had to cope with the double problem of liquidating the existing surplus stocks and permitting control over output and prices to become effective. It therefore followed a policy of lowering exports very gradually but steadily for a period of over two years. Starting with one hundred per cent of the basic quotas for the first two months of regulation, it reduced the percentage by steps of ten per cent and later five per cent in two- or three-month-periods, with only one intervening raise of five per cent. Thus an export rate of sixty per cent was reached after sixteen months of restriction and then maintained for three-quarters of a year, followed by a rate of sixty-five per cent for another half year.[39]

This policy resulted, after further increases of stocks and irregular prices in the beginning, in a considerable reduction of world stocks and a substantial upward movement of prices.[40] With the specter of growing surpluses and ruinous prices thus banned by 1936, the eventual tightness of restriction itself raised a new problem. It consisted in maintaining an adequate flow of supply without disturbing the stability of prices. To this situation, the Committee responded by a change of policy. It relaxed restriction by raising percentages from sixty-five per cent in the second half of 1936 to ninety per cent in the second half of 1937. It did so again by gradual steps, even though it had repeatedly to revise its decisions upwards before they became applicable. On the other hand, it maintained a policy of fixing the higher percentages well in advance of their periods of application, for the express purpose of preventing a temporary restriction of exports from stifling production for future demands, especially the anticipated tire consumption in the United States.[41]

A third stage of regulation was reached when the recession of 1937 caused a sharp decline of American demands for tires with which produc-

[38] Cf. the provisions for maintenance of a definite price range in the agreements between the Reconstruction Finance Corporation, Rubber Reserve Company, and IRRC. (*infra*, note 47).

[39] IRRC. "Communiqués," May 9, Nov. 2, 1934; Mar. 26, Sept. 24, Dec. 3, 1935; and Apr. 28, 1936; *RGAB.* 16: 239–240, 661, 1934, 17: 102, 377, 544, 1935, 18: 149, 1936.

[40] Arcoleo, *op. cit.*, *IRA.* 27: E 355, 1936; George, *op. cit.*, 178–180; "Another Look at Restriction," *RA. NY.* 41: 318, 1937.

[41] IRRC., "Communiqués," Dec. 15, 1936; Jan. 26 and Mar. 16, 1937; *RGAB.* 18: 526, 1936, 19: 3, 85, 1937.

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ELECTRONIC REPRODUCTION PROHIBITED

tion had been especially encouraged to keep up by the repeated increases of export percentages.[42] Against the resulting drop in prices, the Committee resorted to a new tightening of restriction, but this time by more drastic cuts in quicker succession. It brought exportable amounts down from ninety per cent of basic quotas at the end of 1937 to forty-five per cent for the second half of 1938, by only three steps of twenty, ten, and fifteen per cent, respectively, with each quarter; and it permitted a rise to only sixty per cent by the third quarter of 1939.[43]

The effects of defense preparations in 1939 inaugurated the fourth, and so far the last, period of regulation, marked by the release of increased exports to meet growing war requirements. By the Agreement of June 23, 1939, the British and United States governments arranged for the exchange of 600,000 bales of American raw cotton against British rubber of equivalent value, amounting to about 85,000 tons.[44] Since this exchange was to be effected by direct barter between the two governments and to provide them with the reserve stocks for use only in a war emergency, its execution depended on the release of correspondingly higher exports by the International Committee. The British-American Agreement therefore provided for a British request to be made to the Committee for additional releases and for action by both governments to exclude commercial use of the supplies thus released.[45] Following the British request, the Committee revised the percentage for the last quarter of 1939 from the originally announced sixty per cent first to seventy per cent and finally to seventy-five per cent, and for the first half of 1940 fixed it at eighty per cent.[46] Further increases of export percentages resulted from direct negotiations of a representative of the Committee with United States governmental agencies. Agreements between the Committee and the Reconstruction Finance Corporation and its subsidiary, the Rubber Reserve Company, provided for purchases of rubber, at a specified price range, for a new reserve stock first fixed at 100,000 and finally increased to 430,000, tons for United States defense or emergency purposes, and for the release of the necessary additional exports by the Committee.[47] The Committee

[42] Arcoleo, *op. cit.*, *IRA*. 30: E 390–391, 395–398, 1939.

[43] IRRC. "Communiqués," Nov. 30, 1937; Jan. 25, May 31, Sept. 12, Nov. 15, 1938; Feb. 14 and July 25, 1939; *RGAB*. 19: 535, 1937, 20: 52, 238, 393, 465, 1938, 21: 69, 412, 1939.

[44] Agreement for the Exchange of Cotton and Rubber, June 23, 1939, U. S. Department of State, *Treaty Series* No. 947, 1939, Arts. 1 and 2. Cf. "Survey Notes (Rubber and the Barter Scheme)," *RA. L.*, 20: 171, 1939. [45] Arts. 4 and 5.

[46] IRRC., "Communiqués," July 25, Sept. 9, Oct. 3, Nov. 15, 1939; Feb. 20, 1940; *RGAB*. 21: 412, 505, 541, 1939, 22: 19, 1940.

[47] Memorandum of Agreement (First Agreement), June 29, 1940, Second Agreement, Aug. 15, 1940, and Third Agreement, Mar. 7, 1941, *RGAB*. 22: 139–140, 199–201, 1940, 23: 79–80, 1941.

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ELECTRONIC REPRODUCTION PROHIBITED

accordingly revised exportable amounts for the last two quarters of 1940 to eighty-five and ninety per cent, and raised them to one hundred per cent for the first three quarters of 1941 and one hundred twenty per cent for the last quarter of 1941 and the first of 1942.[48]

To fulfill its regulatory function, the Committee also had to observe the measures of members to limit their actual exports to the exportable amounts and the degree to which they were successful. For it had to determine the deficiencies or excesses of actual exports which under the Agreement were to be carried over to subsequent exportable amounts. Also, when exports actually could not be kept to the amounts fixed within the limits of allowable transfers, it had to take note of the obstacles in framing its future regulatory policy. In fact, deviations of exports from contingents could in most cases be handled by transfers to subsequent contingents.[49] However, in the case of the Dutch East Indies, actual exports and percentages proved so wide apart after the second year, and reflected such a discrepancy between production capacity and the estimate on which the basic quotas were based, that the Committee made an exceptional decision. It decided not to deduct the Dutch excess exports from the third annual percentages.[50] It did so in view of an anticipated change in the Dutch basic quotas, even though such an eventuality was not provided for in the Agreement.

Nor was the Committee content with adjusting or disregarding deviations from export percentages within the quota framework of the Agreement. It took action on moves to change the quotas themselves, without resorting to its authority to make formal recommendations for quota changes, which was limited to the renewal of the régime or the accession of new members. When Siam refused to ratify her signature to the original Agreement unless her basic quotas were considerably increased, the Committee is understood to have made a compromise proposal for a moderate increase of her quotas.[51] Actually, Siam was able to extract full consent to her demands from the other signatories. This was embodied in the Protocol of June 27, 1935, followed by slight increases of the Indian and Burmese quotas in the Protocol of May 22, 1936.[52] But the Committee refused to entertain similar claims from Ceylon and British North Borneo, which remained unsuccessful.[53] Again, when the impossibility of

[48] IRRC., "Communiqués," May 21, July 5, Sept. 9, Nov. 28, 1940; Feb. 25, May 20, and Aug. 19, 1941; *RGAB.* 22: 118, 163, 208, 284, 1940, 23: 26, 60, 90, 1941. See also the Communiqué of the IRRC. of Dec. 2, 1941, as quoted in *RA. NY.* 50: 214, 1941. That the quota of 120 per cent could be completely filled was doubted even before the Japanese invasion, *RA. NY.* 50: 38, 214, 1941.

[49] *Loc. cit.*, *RA. L.* 18: 386–387, 1937–38; George, *op. cit.*, 175–176.

[50] IRRC., *Statistical Bulletin*, Dec., 1937, 4 note; cp. George, *op. cit.*, 174.

[51] "One Year of Restriction," *RA. NY.* 37: 182, 1935.

[52] *Supra*, note 2.

[53] "Rubber Quotas Unchanged," *RA. NY.* 40: 47, 1936–37; George, *op. cit.*, 174.

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ELECTRONIC REPRODUCTION PROHIBITED

keeping Dutch East Indian exports to the common percentages proved the inadequacy of that country's basic quotas in relation to those of other members, the Committee decided to recommend considerable additions to the Dutch quotas. It acted upon assurances from the colonial administration that it expected the new quotas to be applied effectively.[54] The Dutch quotas were amended accordingly by the Protocol of February 5, 1937.[55]

The Committee also made decisions on other phases of regulation, such as the permissible acreage for new planting or replanting.[56] Above all, it exercised its authority to make recommendations to the signatories on renewing and amending the Agreement at the end of the first five-year period. It then drew up a thoroughly revised text which, among other changes, increased the basic quotas, revised the limitations of stocks and planting, and considerably extended the powers of the Committee. After releasing the provisional revised text, it undertook negotiations with authorities of Siam on the special position of that country and embodied their results in the final revised text, which was accepted by all signatories.[57] The Committee thus virtually determined the present form of the régime in the light of its experiences.

III

The extent to which the member administrations coöperated with the regulatory policies of the Committee is indicated, above all, by the margin between exportable amounts and actual exports. This margin was remarkably small throughout, hovering around one per cent of the total annual exportable amounts before the war, with the one important exception of the Dutch East Indies prior to the readjustment of their basic quotas.[58] It must be remembered, in this connection, that the basic quotas were originally determined by direct negotiations between producers, and that later changes were worked out by the Committee in negotiations with the governments concerned. The special case of Siam, which obtained quotas in excess of those originally envisaged and of those proposed by the Committee, is explained by the unique bargaining position of that country. Its production capacity was too small to upset the régime, even under a dis-

[54] IRRC., "Communiqué," Dec. 3, 1935, *RGAB.* 17: 544, 1935.

[55] *Supra*, note 2.

[56] IRRC., "Communiqué," Feb. 20, 1940, *RGAB.* 22: 19, 1940. See also the Communiqué of Dec. 2, 1941, as quoted in *RA. NY.* 50: 214, 1941.

[57] IRRC., "Communiqués," Feb. 22, Mar. 14 and 29, 1938, and "Announcement of the Chairman," Aug. 9, 1938, *RGAB.* 20: 117, 118, 297, 1938; Declaration of H. M. Secretary of State for Foreign Affairs, Oct. 6, 1938 (*supra*, note 3). For the provisional revised text, see *RGAB.*, Supp., Feb., 1938; cf. *RGAB.* 20: 152, 1938.

[58] *Loc. cit.*, *RA. L.* 18: 386–387, 1937–38; George, *op. cit.*, 175–176.

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ELECTRONIC REPRODUCTION PROHIBITED

proportionately high quota; but its location invited smuggling transit from its highly productive neighbors if it remained an outsider. Similar considerations may have induced the Committee to conduct special negotiations with Siam at the renewal of the Agreement.

Yet coöperation of the administrations with the Committee's policies was beset with special difficulties inherent in the governmental control of rubber production. Such control was based, wherever possible, on the allotment of individual shares of basic quotas to planters, which corresponded to estimated production capacities of their holdings and from which percentages as fixed by the Committee could be exported.[59] But its operation was complicated by the great number of small holdings, largely in native hands, in the foremost producing countries. These holdings, because of their cheap operation and expansibility, constituted a most elastic part of rubber-planting, for which, moreover, statistics were quite inadequate at the beginning of restriction.

In Malaya, it was thus found necessary to establish two different schemes of supervision, under a common centrally controlled administration.[60] Exports from the estates could be checked directly in a few export ledgers; small holdings were controlled by means of allotted transferable export coupons which could be checked after their transfer to dealers. The coupon system made supervision practicable, but it lent itself to serious abuses.[61] Nevertheless, the Malayan system succeeded in keeping export totals close to their contingents. Similar systems seem to have worked satisfactorily in other British territories. Ceylon controlled all planting by the coupon system.[62]

In the Dutch territories, a similar scheme of direct control covered the European estates.[63] But a special régime had to be applied at first to most native holdings, for which the lack of statistics made estimates of production capacity impracticable. Limitation of their exports was undertaken

[59] H. Lewis and E. G. Holt, *Rubber Regulation and the Malayan Plantation Industry* (Washington, 1935. U. S. Department of Commerce, Bureau of Foreign and Domestic Commerce, Trade Promotion Series No. 159), 1–2; George, *op. cit.*, 168–169. For details of control administration in the member territories, see their reports, published each year in *RGAB.*

[60] A rubber controller was appointed for all Malaya, with district officers as his direct subordinates; the governments united under the British Malayan government either coöperated with him through their departments or entrusted all control directly to him.

[61] Instead of transferring coupons with the rubber to dealers, many small holders preferred to sell them to other planters who could thus increase their production by paying competitors for not planting. This threatened to dislocate labor and revenues.

[62] George, *op. cit.*, 168; *loc. cit.*, *RA. NY.* 37: 182–183, 1935; R. H. Wright, "Basic Rubber Quotas and the Future," *RA. L.* 19: 4–5, 1938–39.

[63] Also native holdings in Java and Madura.

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ELECTRONIC REPRODUCTION PROHIBITED

by an indirect plan of gliding export duties; their rates were made dependent on price fluctuations with a view to absorbing progressively the additional profits from rising prices and counteracting the incentive to increased planting. Actually, however, the duties failed to keep step with the expansion of planting, since they did not outweigh the low cost of native production and marketing from areas underestimated from the first. Despite costly counter-measures of the colonial administration,[64] the resulting excess of exports became so great in 1935 that it threatened to overthrow the whole restriction plan and necessitated the upward revision of the Dutch basic quotas. Meanwhile, the administration proceeded with gathering exact statistics of native planting. With the counting of rubber trees finished in 1936, it could extend individual restriction on the basis of production capacity to all native gardens by 1937, and it succeeded in keeping exports within their readjusted limits.[65]

On the other hand, the concentration of more than ninety-eight per cent of the world's rubber output under four sovereignties virtually eliminated dangers to regulated production from outsiders. In fact, the increase of outside production from the beginning of regulation until the outbreak of the second World War was insignificant in proportion to total world production.[66] In particular, no independent plantations were started on a large scale by the tire and automobile manufacturers of the United States at a time when strategical considerations did not seem pressing. This was an indirect tribute to the policies of the International Committee on the part of the principal manufacturing interests. It implied that they preferred an adequate supply, at prices which, if not low, were safe from excessive fluctuations, to the investments and risks of independent rubber production of their own. The international rubber régime did not fail to arouse complaints both against the principle of limiting production and against what was claimed to be insufficient representation of manufacturers in its operation. But it did not meet the decided enmity of American manufacturing interests which they had displayed, with the backing of the United States government, against the preceding British restriction under the Stevenson plan.[67] The differences between the two schemes, especially the absence of a pivotal price and the provision for manufacturers' representation under the international régime, and also differences in the general economic conditions of the 'twenties and the 'thirties, may have encouraged coöperation rather than hostility on the part of manufacturers.

[64] In order to reduce the export excess of the second quota year, it bought up planting rights from the estates.

[65] George, *op. cit.*, 169–172; *loc. cit.*, *RA. NY.* 37: 182, 1935; Tatistcheff, *op. cit.*, *RA. NY.* 38: 268, 1935–36.

[66] George, *op. cit.*, 175–176; "Should Restriction Be Renewed?," *RA. NY.* 41: 373, 1937. For recent plans for development of new rubber sources outside the Far East, see *RA. NY.* 50: 285–287, 1942.

[67] See especially H. Hoover, *op. cit.*

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Doubtless the Committee promoted this attitude by what is recognized as its moderate policies, and by its preference for methods of negotiation in evolving and applying them.

Altogether, the rubber régime is an example of remarkably smooth functioning of international administration in a field where uncontrolled world trade appeared frought with serious dangers, while regulation was intended to support rather than to supplant free enterprise in production and in international trade. Like other international administrative régimes, it is characterized by an interplay of administrative and diplomatic processes in its operation. The Committee has been anxious to maintain its discretionary powers in principle. But it has actually resorted to negotiations both with business interests and with individual governments when this method appeared fruitful. More particularly, it has used methods of negotiation for purposes which are not within the scope of its formal powers, such as the arrangements made to facilitate ratification by Siam, to disregard unmanageable Dutch excess exports, and to expedite additional rubber purchases by the United States. Above all, it has used such informal methods in order to bring about amendments to the Agreement involving changes in the basic quotas, even beyond its formal power to propose amendments.

On the other hand, few parallels can be found among international administrative agencies to the extent and the incisive character of the regulatory powers of the Committee. Even where international agencies possess genuine powers of regulation, these have usually been confined to matters of a technical and non-political character, as exemplified by the regulatory powers of the International Air Navigation Committee.[68] Where international agencies have been granted such powers in economic fields, with far-reaching political implications, the basic policies have in some cases been laid down in the conventions themselves, only their execution and eventual modification being left to the agency. This has been done in the sugar régimes of 1902 and 1937; the latter, which also involves export limitation by a quota system, directly defines the export quotas in the basic agreement and permits the International Sugar Council only to raise or cut them under certain conditions and within definite limits.[69] The International Rubber Regulation Committee, on the contrary, and similarly the International Tin Committee, has been charged with determining virtually by itself the changing export contingents of each member country, under the conventional rate of allocation.

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[68] Cf. K. Colegrove, *International Control of Aviation* (Boston, 1930).

[69] Cf. my "The International Sugar Régime," in this REVIEW, Vol. 33, pp. 860–878 (1939).

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NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

In pursuance of a mail vote by the Executive Council, the officers of the American Political Science Association announce that the Association's thirty-eighth annual meeting will be held in Chicago, December 28–30, with headquarters at the Stevens Hotel. A major factor in the decision was the railroad situation likely to exist next December in various areas of the country, with a probability that prohibitive congestion will be less likely at Chicago than at other cities considered. The American Society for Public Administration also will meet in Chicago, starting December 26.

Committees of the American Political Science Association thus far appointed for the year 1942 are as follows:

1. *Committee on Program for the 38th Annual Meeting:* Harold W. Stoke (chairman), Harwood L. Childs, Denna F. Fleming, Clarence E. Ridley, Francis G. Wilson.
2. *Committee on Local Arrangements:* Roland Posey, Northwestern University (chairman); other members to be announced.
3. *Committee to Nominate Officers for 1942:* Charles M. Kneier (chairman), Robert R. Wilson, Benjamin F. Wright, Alfred B. Butts, Charles G. Haines.
4. *Committee to Consider Revision of the Constitution and By-laws of the Association:* Robert E. Cushman (chairman), Walter F. Dodd, John A. Fairlie, William O. Farber, J. A. C. Grant, H. C. Nixon.
5. *Committee on Relations with Local and Regional Societies:* Harvey Walker (chairman), Thorsten V. Kalijarvi, Charles Rohr, Schuyler C. Wallace, Charles C. Rohlfing, Herbert Wright, Roscoe C. Martin, John E. Briggs.
6. *Committee on Endowment:* William Anderson (chairman), Arthur N. Holcombe, Joseph P. Chamberlain, Lindsay Rogers, James T. Young, Frederick M. Davenport, John A. Fairlie, Charles E. Merriam, Walter F. Dodd, Frederic A. Ogg, Isidor Loeb, Charles G. Haines, William B. Munro, Charles A. Beard.
7. *Committee on the Personnel Service:* Harvey Walker (chairman), Herman C. Beyle, Arthur N. Holcombe, Samuel C. May, Evron M. Kirkpatrick.
8. *Committee on Publication of Proceedings:* W. Brooke Graves (chairman), Harwood L. Childs, Frederic A. Ogg.
9. *Committee on Public Law:* Oliver P. Field (chairman), Marshall E. Dimock, Charles G. Haines, James Hart, David Fellman.
10. *Committee on Legislation and Legislative Methods, with Special Reference to Congress:* George B. Galloway (chairman), Marshall E. Dimock, Meyer Jacobstein, Benjamin B. Wallace, Schuyler C. Wallace.
11. *Committee on the Publication of Election Statistics:* W. Reed West (chairman), Thomas S. Barclay, Harold F. Gosnell, E. E. Schattschneider, Catheryn Seckler-Hudson.

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12. *Committee on Research:* Ernest S. Griffith (chairman), Karl Loewenstein, Walter R. Sharp, Benjamin E. Lippincott, Carl B. Swisher.
13. *Committee on War-Time Services of the Association:* Charles S. Hyneman (chairman); other members to be announced.
14. *Committee on the Social Studies:* Howard White (chairman); other members to be announced.
15. *Committee to Coöperate with the Advisory Board of the National Citizenship Education Program:* Marshall E. Dimock (chairman), Franklin L. Burdette, Kenneth Colegrove, Pendleton Herring, Peter H. Odegard, Catheryn Seckler-Hudson, Elbert D. Thomas, Joseph P. Chamberlain, John M. Gaus, Roscoe C. Martin, John B. Mason.

At the University of Chicago, Professor Herman Finer, of the London School of Economics and Political Science, is teaching during the spring and summer quarters, and Professor Charles E. Merriam has returned to give a course in American political theory during the spring quarter.

Professor Leonard D. White, of the University of Chicago, has been serving as consultant to the U. S. Civil Service Commission as a member of the Committee on Administrative Personnel, the chairman of which is Professor Emery E. Olson, of the University of Southern California.

At the University of Michigan, Dr. Jan F. Hostie, formerly of the Belgian Foreign Office and Secretary-General of the Central Committee for the Navigation of the Rhine, is serving as lecturer in political science during the current semester.

Dr. Edward H. Litchfield, chief of the division of research and training, Michigan Civil Service Department, has been appointed lecturer in public administration at the University of Michigan and will be in charge of the special curriculum in public administration.

During six weeks beginning February 1, Dr. Manley O. Hudson, Judge of the Permanent Court of International Justice, served as Ann Howard Shaw lecturer at Bryn Mawr College, also conducting the Bryn Mawr-Haverford joint seminary on world reconstruction. In six public lectures at Bryn Mawr, he discussed "Twenty Years' Development of International Law: 1919–1939."

While on leave from the University of Pennsylvania during the current semester, Professor Jewel C. Phillips is serving as state public service supervisor for public works reserve, a unit of the Federal Works Agency, and is making an inventory and six-year program of capital improvements for post-war construction in Pennsylvania.

Professor Lloyd M. Short, of the University of Minnesota, is serving as a member of the Committee on War-Time Requirements for Specialized Personnel, an agency of the National Roster of Scientific and Specialized Personnel.

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During January, Professor John A. Fairlie, now teaching at Ohio State University, delivered an address before the faculty and students of the University of Florida on "War Administration in 1917 and War Administration in the United States Today."

Professor Eric Voegelin has taken leave from the University of Alabama to serve during the spring semester as visiting associate professor of government at the Louisiana State University.

Professor Philip Taylor, on leave from Syracuse University, is now a staff member of the Intelligence Division of the Army, and Professor John C. Russell, likewise on leave, is serving as executive assistant to Mr. Corrington Gil, of the Office of Civilian Defense.

Political scientists on the staff of the Library of Congress—some sixty in number—have organized a Political Science Club. The officers are: Harold D. Lasswell, president; Burnis Walker, secretary; Ernest S. Griffith, chairman of the program committee. Luncheons are held weekly on Wednesdays, at which time either a paper is presented or a panel discussion held.

Professors Frank M. Stewart, of the University of California at Los Angeles, John M. Pfiffner, of the University of Southern California, and Raymond G. McKelvey, of Occidental College, have been named directors of the Los Angeles chapter of the American Society for Public Administration.

Professor Weldon Cooper has resigned at the University of Alabama to accept an appointment with the U. S. Bureau of the Budget, and his work has been taken over by Professor Joseph M. Ray, formerly of the North Texas State Teachers College.

Mr. Meredith Gilpatrick, instructor at Beloit College the past three years, left at the end of the first semester to become a public opinion analyst in the Office of Facts and Figures and has been succeeded at Beloit by Mr. Landrum R. Bolling, formerly of Brown University.

While on leave from Bowdoin College during the second semester, Professor E. C. Helmreich is carrying on research on the relations of church and state in Germany since 1870.

Dr. Russell M. Story, president of Claremont Colleges Graduate School, died at Claremont, California, on March 26. A more extended notice will appear in the next issue of this REVIEW.

At Monmouth College, a separate department of political science has been established, with Professor Robert W. McCulloch as chairman.

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Dr. Claude E. Hawley, of the University of Florida, has been called to active service as a first lieutenant in the Army. He expects to continue in charge of the public administration section of the *Journal of Politics*.

At Colgate University, Dr. James A. Storing has been advanced from an instructorship to an assistant professorship.

Dr. Benjamin Gerig, associate professor of government at Haverford College and formerly with the League of Nations secretariat at Geneva, has joined the staff of the Wharton School, University of Pennsylvania, as lecturer in political science.

Professor W. Brooke Graves, of Temple University, has been granted a leave of absence to permit him to assume the post of recruiting specialist for the third district of the U. S. Civil Service Commission, consisting of the states of Pennsylvania and Delaware.

Professor Hans Kelsen is serving as Mary Whiton Calkins Visiting Professor at Wellesley College during the current semester.

Dr. Albert Lepawsky has been appointed director of training for civilian defense by the city of Chicago, but will continue his work as director of the Institute of Public Service.

Professor Harold Zink is on leave from DePauw University and is spending some time in the South.

Professor Joseph S. Roucek, of Hofstra College, will teach during the coming summer at the College of the Pacific and at San Francisco State College.

Under the editorship of Professor Georges Gurvitch, of the New School for Social Research and Columbia University, a new periodical to be known as the *Journal of Legal and Political Sociology* will make its appearance next autumn. The journal is intended to correlate sociological studies relating to law and politics, and will be published semi-annually until quarterly publication becomes feasible after the war.

In connection with a conference of the Commission to Study the Bases of a Just and Durable Peace, held at Ohio Wesleyan University in March, the Merrick-McDowell lectures were delivered by Mr. John Foster Dulles, Dr. Carl J. Hambro, Dr. Hu Shih, Dr. Leo Pasvolsky, Bishop Francis J. McConnell, and Dr. William Paton of London. All dealt with aspects of the future peace settlement.

Following the preparation of a report on the University's contribution to civilian morale, made in December, 1941, by a committee under the chairmanship of Professor William Anderson, the University of Min-

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nesota appointed a University Defense Committee to take charge of University activities directly connected with defense and not already charged to some department or college of the University. Among other activities, the University Defense Committee has sponsored a course entitled, "War Comes to America," in which Professors Harold S. Quigley, Lennox A. Mills, and Joseph R. Starr are among the lecturers.

Henry Wells Lawrence, professor of history and government at Connecticut College at New London, died January 23, 1942. Born December 2, 1879, in Nyack, New York, he received his college training at Yale, being graduated in 1906, and receiving his doctorate in 1910, following a year's study at the University of Paris. Before beginning his work at Connecticut College in 1940, he held academic posts at the University of Vermont, Dartmouth College, and Middlebury College. His special field was American history, and his interpretations of it and of the current scene appeared in many syndicated articles and in his book, *The Not Quite Puritans.*

At a breakfast conference arranged by Professor Russell H. Fitzgibbon, of the University of California at Los Angeles, and held during the New York meeting of the American Political Science Association, it was decided to organize a group professionally interested in the Latin-American field from the points of view of government, politics, international relations, and law. As a result, a "Latin-American Conference of the American Political Science Association" was established, with Professor Fitzgibbon as chairman for 1942 and Professor Bryce Wood, of Columbia University, as secretary.

The statement on the official records of the exiled governments presented in the December issue of the REVIEW (p. 1158) can now be completed with respect to Greece and Yugoslavia. After leaving Crete and going into exile, the Greek government issued Nos. 167 and 168 of its official gazette (*Ephemeris tes kuberneseos*) at Johannesburg, Union of South Africa, under the dates July 20 and August 15, 1941. No. 167 includes certain earlier acts of the government at Kandia in Crete as well as at Alexandria and Cairo. No. 170 of the *Ephemeris* was issued at London under date of September 24, 1941. The Yugoslav government first resumed publication of its official gazette (*Službene Novine Kraljevine Jugoslavije*) at London under date of August 19, 1941. Included in this issue are (1) the royal proclamations of March 27, 1941, at Belgrade, announcing that Peter II had entered upon his duties as king of Yugoslavia and that he had appointed a cabinet headed by General Simovic, (2) a royal proclamation of April 16, 1941, at Athens, and (3) royal decrees and other documents issued at Jerusalem from May 3 to June 3, 1941.

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A trust, to be known as "The W. K. McClure Foundation for the Study of World Affairs," has been created by Dr. Wallace McClure, of the State Department, in memory of his father. The memorial and trust make available to a board of trustees the McClure family residence in Knoxville, Tennessee, which will be used as a library, study hall, and club house for groups devoted solely to education in world affairs and to the promotion of intelligent and responsible citizenship. The Foundation now serves as headquarters for a junior group open to students from the University of Tennessee and near-by educational institutions, and a senior World Affairs Study Group which, under the leadership of nationally recognized authorities, is considering during 1942 the subject of "Winning the Peace."

The program of the Fourth Conference of Midwest Political Scientists, to be held at Spring Mill State Park near Mitchell, Indiana, May 15–17, will be centered on America's participation in the war. As tentatively arranged, it provides for sessions on: (1) The Rôle of Political Scientists in Time of War—in the university, in the armed forces, and in government service; (2) The United States at War—our military effort, and the functions of the university in war effort; (3) Coördination of Governmental Research in the Middle West. Informal group meetings are to be scheduled on such topics as: (1) The War Powers of the President; (2) Organization of Administrative Management in the Midwestern States; (3) Methodology of Studying Voting Behavior; (4) The Conflict of Ideologies—Democracy vs. Totalitarianism; (5) American Responsibility for Winning the War and Preserving the Peace; (6) Training for the Public Service; (7) Problems of Administration Arising from War Industry; and (8) War and the Political Science Curriculum. The members of the program committee are: Arthur W. Bromage (chairman), Ivan M. Stone, Willis Swartz, Howard White, and W. H. Wickwar.

The twenty-third annual meeting of the American Council of Learned Societies, held in Philadelphia January 30–31, was attended by the two delegates of the American Political Science Association, Professors Joseph P. Chamberlain and Frederic A. Ogg, and the concurrent meeting of the secretaries of societies by Professor Kenneth Colegrove. Principal features of the meeting included a session devoted to discussion of "Scholars and Scholarship in War-Time," and the presentation and discussion of an extensive report of a Committee on Educational Trends in the Humanities. After further revision, the latter report will be published. At a dinner meeting, a *Festschrift* entitled "Studies in the History of Culture" was presented to Dr. Waldo G. Leland, director of the A. C. L. S., in recognition of his outstanding services to the Council and to the interests of scholarship over a long period of years. In the imposing volume, the American Political Science Association is represented by a paper on "Co-

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operation in the Study of Political Science," contributed by Professor Chamberlain.

Establishment at Princeton University of an undergraduate program of study in American civilization was announced in January by President Harold W. Dodds. Evolved after long consideration by faculty committees, the plan is designed to achieve an understanding of the traditions of this country, "not by preachment, but by offering a field of study in the American heritage." "The program will follow two comparatively new trends in higher education, first, the cutting across of one-time impenetrable departmental boundaries, and, second, the lending of realism to learning and the encouragment of individual investigation provided by the conference method of instruction." It "will make use of existing facilities in the departments of art and archaeology, economics, English, history, philosophy, and politics. A student admitted to the program will select one of these departments as his major field of interest and will fulfill the normal departmental requirements. In so doing, however, he will emphasize, in his course of study, the American aspects of this particular field and will write his senior thesis on a topic relating to American civilization. In addition, he will take cognate courses in the American field in other departments. In his senior year, he will participate in a conference course which will integrate his study of American civilization."

The American Library Association created last year a Committee on Aid to Libraries in War Areas, headed by John R. Russell, librarian of the University of Rochester. One of the most difficult tasks in library reconstruction after the first World War was that of completing foreign institutional sets of American scholarly, scientific, and technical periodicals. The attempt to avoid a duplication of that situation is now the concern of the Committee. Many sets of journals will be broken by the financial inability of the institutions to renew subscriptions. As far as possible, these will be completed from a stock of periodicals being purchased by the Committee. Many more will have been broken through mail difficulties and loss of shipments, while still other sets will have disappeared in the destruction of libraries. The size of the eventual demand is impossible to estimate, but requests received by the Committee already give evidence that it will be enormous. With an imminent paper shortage, attempts are being made to collect old periodicals for pulp. Fearing possible loss in this way from the already limited supply of scholarly and scientific journals, the Committee hopes to enlist the coöperation of subscribers to this REVIEW in preventing the sacrifice of this type of material to the pulp demand. Questions concerning the project, or concerning the value of particular periodicals to the project, should be directed to Wayne M. Hartwell, executive assistant to the Committee on Aid to

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Libraries in War Areas, Rush Rhees Library, University of Rochester, Rochester, New York.

A project which has drawn the attention and interest of political scientists during past months is the National Citizenship Education Program —a nation-wide plan for preparation of the foreign-born for the duties and responsibilities of citizenship. Sponsored by the Immigration and Naturalization Service of the Department of Justice, in coöperation with the Work Projects Administration and the Office of Education, the program has elicited such support that all but four states have submitted plans and received funds for coöperating in it. More than seven thousand citizenship teachers have been requested for service on projects approved so far, being designed to provide instructional opportunities for approximately 700,000 foreign-born adults. It is estimated that approximately 350,000 students are already enrolled in the citizenship education courses —fifty per cent more than ever before in the history of Americanization work. Many states have developed a parallel program for those who have already acquired citizenship and for native-born Americans, thereby supplementing the program intended for America's five million aliens. Members of political science departments and their former students can render valuable assistance to the program. To the political scientist, one of the most interesting phases of N.C.E.P. is the philosophy behind it. Teacher education, preparation of student materials, and class work—all are approached from the viewpoint of participation by the student in an ever-widening range of activities as fast as his capacities permit. There is a deliberate and heavy accent on learning democratic principles by living them. Every day, face-to-face activities are associated with the more abstract principles of government which they represent—the latter thus being endowed with a real meaning understandable to any foreign-born student because it is linked up with his own experience. As the N.C.E.P. gathers momentum, professional men may well watch this great effort toward unification through education.

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On the Agenda of Democracy. By Charles E. Merriam. (Cambridge, Mass.: Harvard University Press. Pp. xiv, 135. $1.50.)

No more fitting tribute could be paid to the memory of a great liberal than has been paid to E. L. Godkin in the establishment of the Godkin Lectures on "The Essentials of Free Government" at Harvard University. It is altogether fitting and proper, too, that Charles E. Merriam should have been asked to deliver these lectures last year. Merriam's life, like that of Godkin, has been devoted to the study and the strengthening of American democratic institutions. Both represent the liberal tradition at its best, and through the work and lives of both there shines that rare jewel—an open mind.

The lectures herein recorded are divided into two main parts: the first —"Streamlining Democracy's Structure"—includes lectures on "Democracy and Law-Making," "Democracy and Public Administration," and "Democracy and World Order." The second part, under the general heading "Recasting the Program of Democracy," deals with "Democratic Planning of National Resources" and "Democracy's New Guaranties of the Pursuit of Happiness." The volume concludes with a brilliant and moving Epilogue, setting forth the essential thesis of a free society.

It would be useless to attempt in a brief review to summarize the contents of the book. The lectures themselves are models of condensation. Something of the general theme of these can, however, be indicated by an outline of the problems which Professor Merriam includes as "On the Agenda of Democracy."

As between the affirmative and negative schools of political theory, Professor Merriam has no hesitation about aligning himself with those who represent the view that government is not merely a necessary evil, but, as Aristotle long ago insisted, an agency for the promotion of the good life. "If we recede from the theory that the government is a necessary evil," he says, "and advance to the doctrine that government is a positive good, the doctrine of organization is far simpler."

Professor Merriam gives no aid and comfort to those who insist that freedom and efficiency are incompatible. On the contrary, he insists that "freedom brings efficiency more fully and effectively than slavery. No one even considers a slave organization of factories, mines, and farms in these days"—nobody, that is, excepting the Nazis and their coadjutors. The ultimate triumph of democratic institutions would probably be found in the very fact that Professor Merriam stresses that democratic government and good government are synonymous.

It is refreshing to be reminded again of the basic purposes for which governments are legitimately instituted. These purposes have been set forth eloquently in the Preamble to our own Constitution. "Some day it

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will dawn upon us that all the clauses of the Preamble are worth fighting for." Nor does the author take any stock in the dangerous half-truths that democracy and political power are opposites. No people has ever lost its freedom by giving to its responsible governors powers adequate to the problems they had to face. The essence of dictatorship is not the extent of power conferred, but the terms on which this power is exercised

So long as the ultimate goals and purposes of the state are defined in response to the needs and aspirations of the people, and so long as the government can be held to account for what it does or fails to do, we need have no fear of power. "Paradoxically," says Merriam, "the very fear of dictators, so-called, was turned into an argument against protective forms by which alone the domination by dictators may be prevented from extending over America. . . . Liberty is not secure in proportion as government has no power."

There is a tendency among narrow-minded and timid men to associate dictatorship with strong, and democracy with weak, leadership. The history of our own country and of England contains abundant material for the refutation of this canard. "We now know that leadership is a more widely distributed capacity than was earlier supposed. . . . The modern world is filled with leaders who came from nowhere." The very fact of dictatorship is an admission of the failure and lack of leadership. For if men can lead their people, they have no need to drive or to enslave them. "Leaders who choose themselves and are accountable only to themselves are not the answer to the continuing problem of the organization of political society, but a declaration of bankruptcy." It is such basic principles that illumine all of these lectures.

But Professor Merriam is not content to indulge in abstractions or generalizations. There is here a definite program of action. In discussing democracy and public administration, he deals, in a degree of detail that is surprising in so brief a volume, with the abolition of the spoils system, the position of the executive, and the development of administrative management. He sets forth two great objectives of democracy in the field of world relationships, namely, "the security of a jural order of the world in which decisions are made on the basis of justice, rather than violence," and "the fullest development of the national resources of all nations and the fullest participation of all peoples in the gains of civilization."

Enough has been said to indicate the spirit and nature of the contents of this book. The volume will repay study by students of government, however old or young they may be. It is fortunate for us in these days that our elder statesmen, of whom Professor Merriam is one, are still active in the practical affairs of the nation. Long may they and their kind endure!

PETER H. ODEGARD.

Amherst College.

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Democracy Through Public Opinion. By Harold D. Lasswell. (Menasha, Wisconsin: George Banta Publishing Company. 1941. Pp. 176. $1.50.)

This is one of the most thought-provoking of the recent books on democracy. Perhaps because the form given the material was developed in numerous lectures and discussions, and because the book is not a "war baby," it is characterized by a tone of calm reasonableness that enhances its value.

Professor Lasswell has attempted to clarify the place of public opinion in a democracy. He defines democracy as the practice of justice by majority rule. The rôle of public opinion in supporting democracy is declared to be, first, to make permanent demands for justice and majority rule, and second, to make provisional demands for popular policies consistent with the permanent demands. The improvement of discussion, the development of more wholesome individual attitudes, the improvement of the quality of leadership, and the maintenance of political and economic balance are presented as being among the means which may lead to the desired end.

Some of Professor Lasswell's specific suggestions are unusual and of questionable practicability on any large scale. For example, he advocates the use of the technique of free association for diagnosing the working of the individual mind and to diminish the effect of bias. The psychology taught in the schools will have to be made much more practical before a technique of this nature could be used enough to have any noticeable effect on public opinion. The author's presentation of the proposal that we require our politicians to have professional training is about equally removed from the reality of the immediately realizable. Among the specific proposals of the author, one of the most practicable is the suggestion that we can improve public discussion by having individuals act as clarifiers. In round-table discussions, with which Professor Lasswell has had much experience, one person is sometimes assigned to such a rôle with good results.

Professor Lasswell sees in modern states a trend toward job security, the moderation of great differences in individual income, and the psychological abolition of unemployment. His treatment of psychological factors in democracy is the chief difference between this book and others on the subject. Many other writers have told us that we must modify our economic system and eliminate its grosser injustices, but few others have seen as clearly as does Professor Lasswell the importance of the individual's desire for deference. Reciprocity of respect among self-respecting individuals is a basic element in democratic society. Such a healthy relationship is necessary for the development of a public opinion capable of sustaining democracy. This restatement of the basic principle of democracy,

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respect for human personality, is the most stimulating contribution of the book.

CHARLES W. SMITH, JR.

University of Alabama.

Arsenal of Democracy. BY BURNHAM FINNEY. (New York: Whittlesey House. 1941. Pp. x, 284. $2.50.)

America Prepares for Tomorrow. BY WILLIAM DOW BOUTWELL AND OTHERS. (New York: Harper and Brothers. 1941. Pp. xv, 612. $2.65.)

United We Stand! BY HANSON W. BALDWIN. (New York: Whittlesey House. 1941. Pp. x, 364. $3.00.)

These books are worthy representatives of the many volumes written to prepare the minds of Americans in some measure for the tasks of war. Each of the three is very different from the others in method of presentation, but all are alike in their basically objective, rational, and even-tempered analysis of military preparation. It is no slight thing that this spirit pervades the writers on such subjects. This is an attitude worth preserving in the very heat of war; for clear thinking is a potent weapon. Yet in the few brief months since these books appeared, great and manifold events have changed our ways of thinking and our vocabulary as well.

Mr. Finney, editor of *The American Machinist*, writes for "the American who wants to know more about the defense program." The information was timely and up to date when it was written, in March, 1941. The problems that then called for a "popular" presentation to the public now are either commonplaces or have been superseded by issues so much greater that they seem trivial indeed.

America Prepares for Tomorrow was written "to assist the puzzled student, official, and citizen in their efforts to an orderly understanding of the national defense program." The volume was proposed in the fall of 1940 and written within the next six months. For this editorial *tour de force*, chief credit is due W. D. Boutwell for leadership and to his collaborators for their very high degree of coöperation. In spite of the difficulties that beset the authors, they achieved their purpose admirably, and their book deserves the wide use that has been made of it.

The volume is factual and descriptive. It covers all of the major aspects of the defense program of 1940–41. The range is wide, and since comprehensiveness and timeliness were stressed, the volume must now be extensively revised to be most effective for class-room purposes. The authors performed a public service in quickly bringing together data on national defense at a time when bases for intelligent opinions were greatly needed. Much that they have to say constitutes background information

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of continuing value for an understanding of current problems. A few additions to each chapter would bring the volume up to date. A new edition of the work seems in order.

Hanson Baldwin begins his book with the statement: "Nineteen forty-one may well be America's most crucial year." Within these twelve months, the author saw, a choice would be made for war or precarious peace. He therefore addressed himself to examining "the political and economic—but particularly the strategic and military—aspects of hemisphere defense."

Reviewing this book a year after the author finished his manuscript gives hindsight full scope. Hanson Baldwin withstands this test. While no seer, he is a sound and sensible fellow. The vindication of many of his views by events suggests that all his opinions are worthy of very careful attention. For example, his general estimate of Japanese strength and of the situation in the Philippines is borne out by current history. One thinks of Pearl Harbor when reading: "But for one thing the army and navy cannot be excused—uncoördinated effort. . . . It is essential; it is imperative" (p. 272). The *Hood* comes to mind when we read of Germany's excellent gunnery in target practice witnessed by our navy at a West Coast port. "The practice made us appear novitiates" (p. 166). There is food for thought in this comment: "The fetish of mass must not dominate our military thought. It is possible to combine bulk with quality, but we have not put our feet upon that path" (p. 263). In his estimate of Russia, however, Baldwin is no better than the rest. Would he say today that Russian man power is "ignorant, static, without that spark of enthusiasm and initiative that make great armies. Russia's army is distinctly not great." All in all, however, this volume adds to Baldwin's stature as a thoughtful and well-informed commentator on military problems.

PENDLETON HERRING.

Harvard University.

Democracy Marches. By JULIAN HUXLEY (New York and London: Harper and Brothers. 1941. Pp. x, 126. $1.50.)

Democracy and National Unity. EDITED BY WILLIAM T. HUTCHINSON. (Chicago: University of Chicago Press. 1941. Pp. xi, 140. $1.00.)

These two short volumes must be placed along with the mounting number of books dealing with the nature, the crisis, and the future of democracy. Huxley's work is different because it is the republication of talks made by broadcast to the American people. The purpose of the work is to reassure the American people as to the reality of British democracy, and in this effort the author faces frankly the problem of the British class system, and the existence of monarchy. British democracy is not perfect,

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he says, speaking of the class system; "All I am concerned with here is to try to make clear that it is not incompatible with a reasonable amount of democracy" and that it has some merits (p. 12). He suggests that color and nationality take the place to some degree in the United States of the class system in Britain. To prove his point, he cites discriminations against Negroes and recent immigrants, as well as the class distinctions existing in the East (p. 11). He implies, it would seem, that class snobbery is not worse than Tammany Hall and the Ku Klux Klan (pp. 14–15).

Basically, Huxley argues for a new social service democracy, pointing with pride to the development of state-administered services in Britain. Such a new state will explode the present political system, "which is really a myth surviving from an earlier age, with its divisions of parties into the two hostile camps of property and capital versus labour and a jealous proletariat . . . " (p. 40). Admitting that the Nazis have much to their credit in the organization of the social service state, he contends that we must, in distinction, combine the democratic with the social service trend (pp. 34–35). The democratic and planned state must not be swept away by arbitrary administrative developments.

Six distinguished Americans contribute to the Walgreen Foundation lectures under the title of *Democracy and National Unity*. Thomas Reed Powell discusses "Conscience and the Constitution," exploring particularly compulsory military service and the question of the flag salute case. Henry F. Pringle examines "Politics versus National Unity"; Herbert Agar states his views on "The Press and National Unity"; Harold G. Moulton discusses the "Economic Essentials of National Unity"; Matthew Woll contributes "The Outlook for Labor"; and Oliver E. Baker outlines the problem of "The Farmer and National Unity."

No political scientist will fail to be interested in the essay by Powell, and the contributions of Moulton and Baker are certainly outstandingly important at the present time. However, the value of the essays is unequal, and political scientists will hardly be impressed with the analysis of "Politics versus National Unity." Herbert Agar denies, for example, that America is united by any cultural ties; he asserts that our basis of unity is simply the idea of freedom or democracy. He forgets, it would seem, that the value of freedom of the press is as good as the freedom of those with whom he disagrees. Moreover, many might be disinclined to stress the peculiar task of editors in saying what the world ought to be. On the other hand, the statement of the American agrarian problem is remarkably forceful as it comes from Baker's pen; and the economic analysis offered by Moulton gives some ground for hope in the gradual development of the military economy of the United States. "It remains true, however, that the income of the labor population as a whole can be maintained on a substantially higher level during the war emergency than it has been

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in recent years. Incidentally, the real wages of labor as a whole rose during the first World War period," asserts Moulton (p. 75). On the other hand, Baker points out that a gradual decline in population and an increase in the burden of taxation give warnings for the future, both to the urban and to the rural population.

FRANCIS G. WILSON.

University of Illinois.

The United States and Civilization. BY JOHN V. NEF. (Chicago: University of Chicago Press. 1942. Pp. xviii, 421. $3.00.)

Great responsibilities now rest on our shoulders. Two-thirds or more of the people of the world expect us to furnish the leadership and a considerable portion of the resources for winning this war, and to furnish the leadership and no small part of the resources for creating the new world order that should follow. We are justified in feeling reasonably sure that the United States will not walk out on the war. Can we be equally certain that it will not walk out on the peace? It did last time, and as a consequence must carry a large share of the blame for the present conflict.

If the world is ever to have anything remotely close to a durable peace system, this country must assume a leading rôle in its establishment and maintenance. The groundwork has been laid in the United Nations movement. It is now our task to guide that movement into a new world society —a world society free from selfish political and economic nationalism, militarism, and racialism. Thus our responsibilities are not exclusively economic and political. If a new civilization is to come out of this war, the United States to a great degree will determine the character of that new civilization. It is particularly important at this time, therefore, for us to take stock of ourselves, reëxamining old values and considering new ones.

Professor Nef is interested in moral philosophy. His book analyzes the past and recommends for the future. It is divided into three parts— "Civilization at the Crossroads," "Ends of Civilization," and "Means of Approach." Students of political science will be especially interested in his discussion of democracy and totalitarianism in Chapter IV and in his chapters on "The Future of Democratic Government" and "The Future of International Justice." Professor Nef believes there is hope for the discovery of a "new type of civilization, nobler and more altruistic than any of the past" (p. 375). This hope depends for its fruition upon the survival of democracy, however, and not upon any form of totalitarianism. But if democracy is to survive, there must be less absorption with the material and more with spiritual values, without which the material values themselves may be lost. "Materialism and individual selfishness are America's greatest weaknesses" (p. 356). We must, therefore, try to rescue from the democratic creed of the past "the passion for justice and for the dignity of

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the human being which the constitutional form of government at its best supported as no other political régime has done" (p. 352).

Professor Nef is alarmed about the future of constitutional government, as should be every American who cares about the future of civilization. Scholars in every field—economics, history, philology, chemistry, geology —must take up the challenge. The survival of creative scholarship depends upon the maintenance of democracy. Liberty is essential to intellectual inquiry. With liberty in totalitarian eclipse on the Continent, the survival of Western thought and art depends on America. The American universities are the guardians of Western culture and, as such, have a duty to keep democracy alive. Democracy may or may not be the best form of government ever devised; it is enough that it is superior to the alternative now confronting us. The alternative, whether it be national socialism or fascism or communism, is despotism.

The author does not undertake to outline a plan to make World War III less likely beyond the suggestion that peace must be preserved by force. In the words of Pascal, he says we should "make justice strong and force just." The success of a peace system depends upon maintenance among the democratic peoples of a belief in values worth fighting for. He would have the nations of the world agree to combine in the use of force "against any nation which breaks the peace for the sake of conquest" (p. 389).

It is good to have a book of this kind at this time. There is able critical analysis in it and sound advice. Scholars in all fields should read it.

E. ALLEN HELMS.

Ohio State University.

Constitutional Government and Democracy. By CARL J. FRIEDRICH. (Boston: Little, Brown and Company. 1941. Pp. xix, 695. $4.00.)

This book is not a mere routine revision of the author's *Constitutional Government and Politics.*[1] Although the general structure of the earlier edition remains, changes in organization and a good deal of rewriting throughout make the present edition a clearer, more coherent, and better integrated book.

A new opening chapter traces the historical growth of the idea of constitutionalism, viewing a constitution as the process by which power is divided and governmental action is effectively restrained. Many chapters have been considerably expanded and in each case improved. Most conspicuous among these are the chapters on the amending power and revolution, the constitution as a political force, judicial review, executive leadership, press and radio, and direct popular action. In most cases, German material has been cut down to make room for more American and English

[1] See this REVIEW, Vol. 31, pp. 953–957 (Oct., 1937).

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material and for occasional references to the British Dominions. An expanded and more closely reasoned chapter on methodology now stands at the end rather than the beginning of the book. It contains a convincing defense of political science as a science, and is one of the most suggestive chapters. The seventy-five-page bibliography has been brought up to date and remains a model of what bibliographies ought to be but rarely are.

The book now opens with a vigorous attack on the concept of the state, which Professor Friedrich insists is meaningless and confusing for modern democratic thought because, since the time of Aristotle, it has carried with it organic, static, and formalistic connotations. One can agree with Professor Friedrich that the word *state* has often been in bad company, and one can willingly acknowledge that Professor Friedrich gets along very well without it; but when he says that the word suggests "some kind of magical superentity," he is disregarding the fact that many contemporary writers have a concept of the state entirely devoid of the connotations to which he properly objects. However, Professor Friedrich's rejection of the term is closely related to his whole realistic and functional approach. The same approach leads him to such useful theses as that bureaucracy is "the core of modern government," that the rôle of parliament is not only deliberation but also integration, that power is a relationship rather than a substance, and that power relationships involve both consent and restraint.

One familiar thesis which Professor Friedrich accepted in 1937 he now rejects. He maintains, in opposition to his earlier view and to the prevailing view, that "agreement on fundamentals" is not a necessary condition of constitutionalism. It seems evident that the maintenance of constitutional government does not necessarily require a people so "fundamentally at one" as Balfour apparently believed the English to be; but in contending that the agreement to use constitutional methods is the *only* essential agreement, Professor Friedrich seems to be making a purely verbal argument. For the agreement to use constitutional methods has never existed *in vacuo;* it has always—even in Switzerland—been associated with some other kinds of fundamental agreement.

Several errors may be noted: "no [American] president has ever been elected by a minority" (p. 376); "those who contribute money to campaign funds are a . . . cross-section of the electorate" (p. 376; Professor Overacker's reports seem clearly to indicate the opposite); the date of the Act of Settlement is given as 1700 (p. 174).

Professor Friedrich's control of an unusually broad range of historical and contemporary material and his skill in handling theoretical concepts made the first edition a most important and provocative book; the second edition is even better.

JOHN D. LEWIS.

Oberlin College.

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On Social Freedom. By JOHN STUART MILL. Reprinted from the *Oxford and Cambridge Review*, June, 1907. With an Introduction by Dorothy Fosdick. (New York: Columbia University Press. 1941. Pp. 69. $1.00.)

The Man versus the State. By HERBERT SPENCER. With an Introduction by Albert Jay Nock. (Caldwell, Idaho: The Caxton Printers, Ltd. 1940. Pp. xiv, 213. $2.00.)

The first of these books is a republication of an inaccessible and neglected essay of Mill. It should contribute a great deal toward a better appreciation of the extent to which Mill's position had shifted during his late years. The second book includes four essays originally published in 1884 under the title *The Man versus the State* and two others entitled *Over-Legislation* and *From Freedom to Bondage.*

In view of the fact that both Spencer and Mill took as their point of departure the early Utilitarian doctrine, the divergence of their views concerning the relation of liberty to authority is remarkable. It would be even more astonishing if that doctrine itself had not provided one of the reasons for this disparity by its lack of consistency. The early Utilitarians denied the working out of natural justice in politics and law, while insisting that it is realized in the economic field through the free operation of the competitive market. Taking the latter position as a starting point, and bolstering it by pseudo-scientific analogical reasoning, Spencer became the most extreme exponent of *laissez-faire.* Regarding man as an isolated being with self-limited interests, he contended that every law curtails freedom and that the measure of liberty is determined by the relative presence or absence of law. Mill moved in the other direction, becoming more and more doubtful about the validity of the allegedly unalterable laws of economics and about the efficacy of the mild legal reforms which the early Utilitarians proposed for the righting of social wrongs. In the present essay, Mill admits that liberty is in less danger from law than from certain non-legal restraints. Mill sees that the unrestrained pursuit of self-interest by some is inconsistent with the freedom of others and may be anti-social in its effects. He does not, however—as Miss Fosdick points out in her excellent introduction—"see the full implication of his own admissions. . . . Since liberties conflict, and since some in any group of liberties may imperil the general welfare, liberty or any group of liberties cannot be defended as a final good. Liberties must rather be defended (as Mill had in part argued) as conditions of welfare. As such, conflicting liberties must be weighed among themselves and then be judged in relation to other essential conditions of life" (p. 20).

While Miss Fosdick has written an illuminating and critically analytical introduction to Mill's essay, Mr. Nock swallows Spencer's doctrine hook, line, and sinker. Decrying the trend toward "Statism," which, according to him, manifests itself in everything from the income-tax amendment to

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the New Deal, Mr. Nock recommends Spencer's essays as the best available antidote. Only someone whose mind has been closed for at least fifty years could possibly be as eager to resuscitate a "dead horse" and be as hopeful about its possibilities as is Mr. Nock. This leads to but one conclusion. If the opposition to the New Deal has to rely for its theoretical foundation on something that squares no more with the facts of present-day life than the discredited position of Spencer, the New Dealers should not have to worry on that score.

HENRY JANZEN.

Hamilton College.

Censorship 1917. BY JAMES R. MOCK. (Princeton: Princeton University Press. 1941. Pp. 250. $2.50.)

It is a safe bet that Byron Price has a well-thumbed copy of Dr. Mock's book on his bedside table. It is even a better guess that college professors called suddenly to lecture on war-time public opinion, are even now scribbling notes from its pages; and if they have not already done so, Army and Navy public relations men should con the lessons spread out before them in *Censorship 1917.*

This is by way of saying that the first thoroughly comprehensive picture of American censorship in World War I has appeared in print at a time when it could best serve a public purpose. Dr. Mock probably did not anticipate Pearl Harbor, yet he must have understood that war clouds in the heavens meant we were in for a squall. His prescience in assembling the story of the government's control of script, print, picture, and oral utterance should earn him the thanks of those who have imagination enough to make use of the book to improve upon our 1917–18 censorship structure and to guard against past mistakes.

While Dr. Mock and Cedric Larson summarized First World War censorship in Chapter II of *Words That Won the War,* the volume under review not only explores the subject more intensively, but treats many additional phases. The work of the Censorship Board has never been treated so adequately; indeed, it has hardly been detailed at all in past contributions. Dr. Mock's analysis here is a major accomplishment. His unfolding of the story of "banned books" and the tussle over Hollywood feature films brings to light much new material.

Dr. Mock pursues his way so evenly that sometimes the importance of the facts he has dredged up after patient research are not sufficiently high-lighted or hall-marked for the lay reader. In "Cables and Telegrams," for example, he reports the order on overseas communications issued by censors to "prevent spreading of false reports or reports likely to cause directly or indirectly dissatisfaction with America's cause." In making certain that this country was "correctly reported to the world,"

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the censor-turned propagandist. Dr. Mock holds positive views on the mixing of the two functions, but he does not reveal them in this volume. Neither does he specifically summarize what were the obvious shortcomings of the 1917 censorship and what were the strong points of which we can approve in the light of later events.

While *obiter dicta* are lacking in *Censorship 1917*, Dr. Mock does reveal his concern over the possibility of a carry-over of censorship controls into a peace-time world. He closes with the following: ". . . Americans, remembering the evils of the censorship carry-over from World War I, should steadfastly resolve, in the midst of whatever crisis, that with the end of the crisis civil liberty in this country shall have a new birth. If repression continues after the war is over, we shall have lost the very ideal for which we fought."

RALPH D. CASEY.

University of Minnesota.

Our Landed Heritage; The Public Domain, 1776–1936. By ROY M. ROBBINS. (Princeton: Princeton University Press. 1942. Pp. xii, 450. $5.00.)

Under the provisions of the Taylor Act of 1934, the President withdrew all public lands from private entry (February 5, 1935). The opportunity for individual settlement on the public domain being thus brought to a close, Mr. Robbins considered the time ripe for a synthesis of the history of the public lands of the United States. Ten years a student of public lands questions, Mr. Robbins had qualifications for this task which were further strengthened by an opportunity to study public reaction to the conservation movement in the Rocky Mountain and Pacific Coast states, an opportunity made possible by a grant-in-aid from the Social Science Research Council.

This meaty volume is divided into four parts. Part I—"The Settler Breaks the Way"—carries the story from the grievance voiced in the Declaration of Independence against the king for his effort to "prevent the population of these States" to the free land and free soil movements of the 'forties. In Part II, "The West Welcomes the Corporation," and in doing so lures the European, finds the slaveocracy opposed to free land, makes an alliance with industry, enjoys a boom, and endures the hardships of a second great panic (1857). In Part III, "The Corporation Triumphs" —particularly the railroad corporation. Although the Homestead Act of 1862 was heralded as one of the greatest democratic measures of all time, its enactment was one thing, its operation was another. Conservation is the theme of Part IV. Theodore Roosevelt forces the issue; the West is defiant; Taft pushes on; and the West is conciliated.

The author feeds hundreds of quotations into his volume in such a way as to indicate his mastery of them, and they greatly enliven his work. In a

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literary sense, he is at his best in describing, chiefly by the judicious use of quotations from eye-witnesses, boom times and panic on the frontier. Here he presents a picture at the same time clear and interesting. Occasionally the reader experiences some difficulty in finding his way through the assembled mass of factual detail; but, considering the number of Congressional enactments and administrative regulations bearing upon the subject, some confusion to the reader may be unavoidable. Yet it may be suggested that a more liberal use of summaries might have further clarified some of the topics presented. This criticism is not intended to suggest that the author does not reveal the land aggressions of the frontiersman, the rapacity of the corporations, the sectional and economic conflicts, and the tardiness of Congress in enacting appropriate legislation to develop and conserve "Our Landed Heritage." Furthermore, he weaves his story into the fabric of American history, thus enabling the reader to catch the broader meaning. For example, he clearly sets forth the reasons for the early opposition in the East to Western development and the considerations which caused the Old South to favor that development, and with equal clarity he shows why these two sections reversed their positions just prior to the Civil War.

Mr. Robbins gives evidence of careful research and scholarly balance on practically every page of his work. He seems to make use of every available authority and, very properly, he does not disdain local Western newspapers such as the Copper Mountain *Miner*, the Laramie *Boomerang*, and the Walla Walla *Weekly Statesman*. He is careful in apportioning praise and blame, thus avoiding the common mistake of visiting condemnation upon classes of persons for the mistakes and frauds incident to the disposition of the national domain. His conclusions are marked by scholarly restraint. Indeed, this reviewer believes that the author would be justified in reaching more and stronger conclusions. Viewing the work as a whole, it may be said that it fills a definite need and fills it so satisfactorily that there is no reason why another authority should undertake the same task for some time to come.

CLAUDIUS O. JOHNSON.

State College of Washington.

Investigating Municipal Administration. BY HAROLD SEIDMAN. (New York: Institute of Public Administration. 1941. Pp. 215. $2.50.)

Dr. Seidman writes as an important employee of the New York City Department of Investigation and as a candidate for a degree at Columbia University under the tutelage of Dr. Luther Gulick. The resulting doctor's dissertation is a history of the Department from its inception in 1873 to the present, plus a brief discussion of departmental procedure, and a still briefer evaluation of similar staff agencies in other cities.

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Possibly the greatest value of the book lies in its discussion of the controversial value of official staff agencies and official critical agencies within a government. To be sure, the history of the Department is of interest, and the author carries that history through its turbulent evolution from its origin in the Tweed scandals as Commissioners of Accounts, then as the Commissioner of Accounts, Department of Investigation and Accounts, and finally Department of Investigation. Across his pages march familiar and powerful names in "reform"—Mitchel, Fosdick, Bruere, Wallstein, Blanshard, Seabury. The reviewer read these chapters with a twinge of nostalgia for his youth—even for the abuse of those then English-trained accountants in the Department who disdained adding machines and more than disdained the services of what would now be called "junior administrative assistants," who couldn't make a column of figures foot the same twice in succession.

This history brings into relief two needs in government—the need of the principal executive (in this instance the mayor) for staff aid in the investigation of the problems of administration; and the need of citizens and taxpayers (or their representatives) for critical appraisal of the conduct of public business. Sometimes these separate and distinct needs are confused and an effort is made to meet them by the creation of a single official agency. By and large, the present Department of Investigation has been a staff aid to the mayors of New York City. When these latter have been able and honest, the Department has also served as an agency of investigation on behalf of the public. When the mayors have been something else, the Department has been a whitewash brush or nothing at all. Seabury evidently sensed the existence of two unrelated services—aid and criticism—when he urged that the Department be made responsible to the board of aldermen instead of the mayor, although his advice was not followed. The Massachusetts legislature had the same thought when it authorized the Boston Finance Commission as independent of the city government, as did the voters of Detroit when they made their auditor-general an appointee of the council with large authority independent of the administration.

One recognizes that the executive of every large governmental establishment requires staff aid to carry out his duties. One senses, too, that criticism of government is equally necessary and that this criticism seldom comes from an agency that is responsible to the administration that it is supposed to criticize. The reviewer recalls the story of the official bureau of municipal research in Cincinnati and of the Republican mayor who chided his city engineer for voting for the Democratic "reformer" Henry T. Hunt. "How do you know that I voted for Hunt?" "What do I have my bureau of municipal research for?," replied the mayor.

Whether the critical faculty can be lodged in the legislative body re-

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mains to be proved. To a prejudiced observer, the Boston "Fin-Com" does not present conclusive evidence; the Detroit experience with an auditor-general is too new to tell, and the story of the New York Department of Investigation indicates that it cannot, except under a Mitchel. Most cities give their administration some sort of staff aid and leave objective criticism to citizen organizations.

LENT D. UPSON.

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Advisory Bodies; A Study of Their Uses in Relation to Central Government, 1919–1939. EDITED BY R. V. VERNON AND N. MANSERGH. (London: Allen and Unwin. 1940. Pp. 520. 18s.)

Canadian Boards at Work. EDITED BY JOHN WILLIS. (Toronto: Macmillan and Company. 1941. Pp. xxxvii, 190. $2.00.)

Both of these books are concerned with the functions of boards and commissions in parliamentary government; but they differ in several respects. One deals with their use for information and advice in the formulation of administrative policies, the other chiefly with their use as administrative agencies. The first is confined to committees in national government (Great Britain); the second includes boards and commissions of three Canadian provinces as well as of the Dominion of Canada. The English study is the product of ten scholars working under the Oxford University Politics Research Committee, under the chairmanship of Sir Arthur Salter, who opens the book with a short prefatory notice; the Canadian study is also a composite product, undertaken by the Institute of Public Affairs at Dalhousie University, but the contributors are either lawyers (and law teachers) who have had experience with the boards they describe or are administrators.

The purpose of the studies seems to differ, too. The English authors sought to determine the influence and effectiveness of different kinds of advisory committees in the several departments studied, whereas the Canadian writers appear to have had in mind rather a statement of the functions and defense of the employment of administrative boards than an assessment of the utility of these agencies as compared with others. This difference as to purpose is emphasized by the personnel of the contributors. An objective consideration of the uses of administrative boards can hardly be expected from the members and employees of such boards, although such writers may be able to furnish a more vivid and experienced account of the various bodies' problems and methods of operation.

Fifty years ago, such studies of administrative practice in a parliamentary system would have been inconceivable. At the commencment of this century, it was thought that a cabinet, backed by specially trained civil

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servants and supported by a majority in a popularly elected parliament, was possessed both of adequate information and of representative opinions for almost any purpose. Today, however, such confidence is strangely lacking. Sir Arthur Salter commences his preface to *Advisory Bodies* with the assertion that the "proper use of Advisory Bodies is the right answer of representative democracy to the challenge of the Corporate State." He accepts the view that Parliament as now constituted is insufficiently expert in the specialized economic and social problems of the modern state to control administrative action; accordingly, he offers advisory committees and boards as the new device for introducing "functionalism" into democratic institutions. Few readers of the volume will conclude that advisory bodies, as at present used, constitute an effective reply to the "challenge of the Corporate State." If parliamentary democracy as a constitutional form is challenged by the corporate state, it is not in the realms of ignorance and knowledge (the former being overcome by advisory bodies), but is in the realms of organized power and centralized will. This is not to deny the utility of advisory institutions, but is simply to reject their elevation as a panacea for democratic ills.

For the purposes of the inquiry as to methods and results of the employment of advisory bodies, studies were made of their use by the government as a whole (where they seemed least useful), by the Treasury, by the Boards of Trade and Education, the Ministries of Health, Labor, and Agriculture, and by the Unemployment Assistance Board and the Department of Mines. By concentrating on eight departments, it was possible to follow certain problems through the several stages of rise, discussion, and subsequent treatment. Although it may be unfair to particularize among studies each of which has a special value, the reviewer cannot refrain from declaring that he found the fourth (education) by Mr. John Graves the most interesting and attractive. The advisory bodies prove to be of varied types, from representative commissions and councils to small expert committees, sometimes permanent or statutory, often transient and *ad hoc*. Americans may be surprised at the infrequence with which partisanship enters the picture. In general, it appears that large permanent councils with general advisory functions tend to degenerate in time, that only in the social services have continuous bodies been of value, that precise (but not too restrictive) definition of a problem to be investigated is often as important as the expertness and wisdom of the personnel, and that in issues tinged with political implications a successful report (that is, one leading to action) must be in the direction expected by the government. There is an appendix listing the various bodies appointed in the departments studied.

The other volume, *Canadian Boards at Work*, is a much less pretentious work, and the individual contributions are much shorter and compara-

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tively sketchy. The introduction by Professor J. A. Corry properly connects the use of the administrative boards with the decline of *laissez-faire* traditions, a development not very pronounced in Canada before the First World War. It appears that the Canadian practice of establishing boards for administrative purposes which could have been undertaken by the established departments was copied from American usage. Boards are used for operating industrial enterprises, regulating rates and prices, advice, and adjudication. Of these, it is asserted that the regulatory boards are most important. Part I contains brief studies of the administrative work of one Dominion board (transport) and of two Ontario boards (workmen's compensation and securities). Part II, "Administrative Discretion," consists of two short essays on "unjust discrimination" with special reference to railway rates and on "public convenience and necessity" as interpreted by the Nova Scotia public utility board. Part III is devoted chiefly to procedure before two farmers' debt boards in Saskatchewan. The relation between the two is not made clear, and the outsider might be slow to perceive that they are working under separate Dominion and provincial legislation. The only hint of political forces at work is contained in a few remarks in this section; for, despite the aggressively anti-legalist assertions of the editor, who has interesting forewords to each part, the volume suffers from an uncritical legalist acquiescence in the purposes of the bodies described.

These two works are welcome additions to the growing literature devoted to administrative practices. It is to be hoped that the careful English study will find many readers in governmental as well as academic circles, and that the Canadian essays will reach the wider and less specialized public to which they are directed.

H. McD. Clokie.

University of Manitoba.

The Quest for Law. By William Seagle. (New York: Alfred A. Knopf. 1941. Pp. xv, 439. $5.00.)

The house of Knopf has achieved both a highly attractive format and a probable best-seller of more than ordinary merit in the publication of Mr. Seagle's book. So much is beyond cavil. But it is difficult to go much farther in assessing the quality of the book as a whole, because it is disconcertingly uneven. Mr. Seagle has, for example, two rather short chapters (one at the beginning and one at the end of the work) which deal with the philosophy of law. To be quite frank, the reviewer does not find these altogether coherent. On the other hand, the bulk of the volume consists of a survey of legal institutions which is eminently satisfactory, even when provocative of sharp disagreement.

Mr. Seagle believes that law is "a mode of regulating conduct by sanc-

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tions imposed by politically organized society." Of the two ideas involved in this definition, i.e., sanction and authority, sanction is by all odds the more important in his discussion. But the authority of the state is also still apparently involved. And the author wobbles a good deal in his definition of the state. The general impression conveyed, however, is that the state's "legitimacy" is an elaborate hoax.

On the other hand, he discusses as law ("primitive" law) social control antecedent to politically organized society. He also singles out the institution of courts, the "litigious equation," and a professional class of lawyers as highly significant in the development of law. Moreover, he often talks as if law were an abstraction so far as government is concerned, i.e., a normative system capable of furnishing a standard for the latter.

This ambivalence continues to plague him even if we follow him in concluding that the idealistic law—including all the techniques of judicialization just mentioned—is itself a fiction. Thus, when he tells us in effect that the quest for law is hopeless, we can never be sure whether he is saying to that host of earnest spirits who have pursued this quest: "Good people, what you have been looking for doesn't exist;" or, "Good people, you have been looking in the wrong place for law: it has been with you always, and most conspicuously in the shape of despotism and dictatorship." Perhaps the last conclusion most nearly squares with the author's intent, because he says as much in the last chapter.

To turn to the more favorable aspects of the book, the author adopts as his principal divisions three stages in the development of law. Thus, Book II is entitled "Primitive Law," Book III "Archaic Law," and Book IV "The Maturity of Law." Book V, entitled "The Vanishing Points of Jurisprudence," concludes the volume, except for a final chapter (one of the two referred to above) entitled "Justice According to Law." The discussion of primitive law and archaic law proceeds under more or less orthodox chapter headings. The reign of custom, the kinship principle, and the origins of property are appropriately considered under the first. The second instances the appearance of courts with compulsory process, and the institution of the king's peace and the development of judicial procedure follow along with commendable *zusammenhang*. The implementation of a title like "The Maturity of Law" obviously calls for a higher degree of selectivity, and Mr. Seagle rises to the occasion by singling out the rise of legal systems, equity, the law of nature, the rule of law, the criminal law, contract, and codification. Finally, "The Vanishing Points of Jurisprudence" (in itself a most intriguing conception) integrates discussion of the American doctrine of judicial review, administrative law, and international law.

All of the above subjects are supported by sixty-three pages of notes and bibliography, fully adequate in range and content for the purposes of

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the serious student of jurisprudence. Moreover, while the discussion of some of these subjects is in the nature of highly condensed summary (for example, the account of the substantive development of Roman law), Mr. Seagle usually undertakes a certain amount of independent probing into the problems encountered. In the course of this probing, the reader comes quickly to the conclusion that the author has a gift for trenchant characterization, an incorrigible urge to break icons, and perhaps a few personal prejudices.

It is decidedly helpful to an understanding of medieval law to be told that the register of writs was "the fulcrum of English justice." And the author achieves a true perspective on natural law with a minimum of words when he observes (p. 196) that the "adaptation of the law of modern Europe has been a phase in the history of the law of nature rather than of equity." There are also further generalizations about natural law which would be similarly illuminating were they applied specifically to natural rights. The author does not distinguish between natural law and natural rights, however, with the result that he finds himself undertaking to establish a universal revolutionary character for the former: "In the period of the enlightenment, natural law finally fulfilled its ultimate mission, which is to shake the foundations of an established legal order." A few pages later, this lack of discrimination turns a perfectly true observation into an unexplained paradox when he says (p. 208) that "new social classes . . . have not appealed to the simple precepts of natural law."

Apropos these "new social classes," it must be confessed that Mr. Seagle sometimes reads more Marx into legal history than the evidence seems to warrant. Thus on page 189 it is asserted that the survival of English equity was due to the fact that it represented primarily the interest of the wealthy landowners and merchants of England. This is just a case of generalization outrunning the evidence, but on page 241 the author gives reign to pure fantasy: "The equalitarian criminal law, having become judicialized to a far greater degree than ever before, it is necessary for the dominant class to have some avenue of escape in certain circumstances, and this is provided by the element of intention." The author credits Brooks Adams with "a brilliant exposition of this thesis." In the opinion of the reviewer, "brilliant" is at least a better adjective than "sound" in this connection.

There are times, of course, when Mr. Seagle is fully justified in exposing the underlying economic and class factors in accounting for legal institutions. This is particularly true of contract, and here he is probably at his best. One notes, for example, how neatly the enforceability of purely executory agreements is coupled with the appearance of the modern market agreement to buy future goods at a given price. Here also one finds the

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connection between contract and the basic postulate of the abstract juristic person ably exposed. And, finally, it should certainly be conceded that the author's comprehension of the shift back from contract to status is both generous and subtle. His treatment of the standardization of contract as proof of the cyclical movement in the status-to-contract process amends Maine in the grand manner of the original. And he displays a nice bit of discrimination in denying the socializing significance of private law limitations on the use of property based on *sic utere tuo ut non alienum laedas*.

One cannot follow Mr. Seagle nearly so readily in his self-assumed character of debunker of over-facile generalizations. As already noted, he is himself not averse to facile generalization when it serves the purpose of his own philosophy of history. But there are times when he proceeds to the job of deflating an adversary for the sheer love of it. Maine, for instance, is taken severely to task for the perpetration of "the greatest of all myths, that early codes represented a reduction to written form of preëxisting customary law." No doubt Maine needs qualification here, out of regard for both the fragmentary aspect of the codes and the fact that the precise qualities they dealt in *were* probably fixed for the first time definitely in the code. It is not true, however, that statutory innovation (Seagle's alternative) is characteristic of the codes.

Again, the author heartily disapproves of the "cultists" of the two great "systems" of law. He does not believe that there is a *Geist des Romisches Recht*, and even less that there is a "spirit" of the Common Law. As a prelude to proof that the characteristics of these contrasted systems are largely conditioned by the phase of development through which each is passing, the anti-cult expressions are unexceptionable. But our author's cosmopolitanism is not satisfied with half-way measures. He does not say, for example, that *stare decisis* has been over-emphasized as peculiarly English. He says, in effect, that precedents mean as much on the Continent as they do in England; or that Roman law was as much judge-made law as English law—propositions, of course, which Mr. Seagle's authorities do not fully support.

Since Dean Pound has written a little book of essays on *The Spirit of the Common Law*, one might expect to find him well within the range of Mr. Seagle's attack. It is nevertheless surprising to note how consistently the Dean finds himself in a direct line of fire. The discriminating reader may, therefore, have some difficulty in convincing himself that ideas only are involved. Or, perhaps, the conflict of ideas is only another "sham battle," in which event positivism has indeed come full circle.

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Economic Consequences of the Second World War. By Lewis L. Lorwin. (New York: Random House. 1941. Pp. xvii, 510. $3.00.)

The title of this book lays the author open to charges of which he is really not guilty. One is the apparent assumption that economic consequences of the present war can be discussed apart from the political forces in motion and the political decisions taken now and after the war. Though perhaps in a different sense than Spengler anticipated, this war has seen the triumph of the sword over money in all countries (President Roosevelt's comment on the "silly old dollar sign" is symptomatic), and no one can doubt that politics will dominate those few vital post-war years when to the victors will belong the opportunity to re-shape the world. Lorwin, of course, recognizes this, and his discussion is fully as much concerned with the political decisions as with the economic consequences.

The title likewise seems to indicate an intent to predict the world's post-war course. This Lorwin does attempt, though within limits. The major part of the volume is devoted to discussing the consequences of a Nazi victory, on the one hand, and of a "democratic" victory on the other. Obviously, these two assumptions are too broad to permit much in the way of soothsaying. They would have to be made much more precise to furnish the foundation for remotely valid predictions—not merely the fact of democratic victory, but also the length of the war, the temper of the United States at its close, Russian terms for coöperation, the extent of starvation and social and economic breakdown in Europe, and a thousand other variables would have to be assumed.

Tacitly recognizing these limitations, Lorwin does hazard his forecast of the shape of things if a Nazi victory comes. This job is not so difficult, for Nazi domination of the conquered countries of Europe (Germany included) has continued long enough so that a projection of present trends should give us the profile of the wave of the future. Grounding his analysis on present practices and announced intentions, Lorwin presents a credible picture of the economic organization of a Nazi-controlled Europe and a Nazi-dominated world. Attention is given to the probable course of Germany's policy toward her poor relations in the Axis, as well as toward the non-Axis nations. The chapter on "The United States in an Axis World," while presenting the perils of such a situation in a fashion that should have convinced any rational pre-Pearl Harbor isolationist, now seems somewhat out of focus, for it appears to assume an Axis victory in a war in which the United States was not a formal and full-fledged participant, and it certainly does not assume a conquered United States, which is now a necessary condition of a Nazi-Japanese victory.

It is better, however, to pass on to the more pleasant side of Lorwin's picture, our present concern with a Nazi victory being simply to make sure that it does not occur. The author does not attempt the impossible task

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of guessing what the United Nations would do with a victory, but confines himself rather to an examination of past failures of, and present proposals for, international political and economic organization. He analyzes the case for free trade, Federal Union, a reconstructed League, and an international police force. "Union Now" he considers to be completely lacking in "social-economic concept and goal," its backers concerned only with political problems, and relying mistakenly on the "magic economic power of free trade." He devotes separate chapters to labor and socialist aims, the concept of world democratic planning, and the special position of Great Britain and of the United States in a reorganized democratic world. There is no similar chapter on Russia.

The concluding chapter on "A World New Deal" is in some respects the most interesting in the book. It argues that American policy should be the translation into world terms of the essentials of the New Deal. In the economic sphere, this calls for concerted action by the Great Powers to stimulate and maintain a policy of economic expansion. Lorwin believes that political complications will be solved more easily as economic interests are reconciled and social conditions improved. As for the machinery of this World New Deal, he sketches in five institutions, including an International Colonial Administration, a World Economic Development Organization, and an International Relief and Social Assistance Commission. A World Assembly of Nations would meet annually, with powers of recommendation to these institutions. Gentlemen, the Lorwin Plan!

C. HERMAN PRITCHETT.

University of Chicago.

Grand Strategy. By H. A. SARGEAUNT AND GEOFFREY WEST. (New York: Thomas Y. Crowell Company. 1941. Pp. xi, 246. $2.00.)

This book deals with grand strategy as "not merely a military but a social science" (p. 7), whose subject-matter is the ever-changing and reciprocal relationships between war and the society in which war occurs. It aims to aid in the evolution of the superior over-all technique needed to win the present war and the peace after it. The book, therefore, first traces the development of grand strategy from the days of Napoleon to the present war, to show how Europe's leading Western Powers each in turn achieved a superior technique for continuous change by utilizing previous experience and improving upon it. In each case the authors present the basic reasons for the rise and fall of these nations prior to the present war.

The book next analyzes the grand strategies attempted by Hitler, Stalin, Churchill, and Roosevelt, to find out whether present democratic over-all planning and organization are suited to their end. In spite of the belief of the authors that "in the final reckoning the democratic creed is superior

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to that of Nazism in its capacity for continuous change and improvement" (p. 25), they find that democratic strategy has not yet fully achieved the superiority required to the end (pp. 159 ff.). They conclude that the war and the peace after it can be won only by maintaining at all times that kind of grand strategy which permits continuous and efficient change rather than security, and which through superiority in leadership, imagination, and the arts of peace eliminates war as a necessary factor for progress in national organization and evolution.

Grand Strategy does not claim to present any new facts in military strategy or the social and political organization growing out of the present or past wars. It claims a new interpretation of the facts by a scientific method concerned only with the actual and attainable. This scientific approach results both in a provocative and a detached treatment of familiar materials. But the conclusion that grand strategy is "the development of human experience dependent at once on the heritage of nation and race, and also upon personality and personal reaction" (p. 209), rests only partly on that approach. Partly it results from a latent belief of the authors that the evolution of society is due to a continuous struggle for survival in which war is the only test of quality of development until grand strategy finds a peaceful method of competition and selection of the strong and great (cf., *e.g.*, pp. 24 ff., 205 ff.).

On the whole, the book presents in stimulating form commonly held ideas and generally accepted facts. Its authors state that the occasional references in the text and the thirty notes added to it bear no relation to the considerable and specialized research and experience of which it is a result. As a guide to present grand strategies and their evaluation as means to an end, *Grand Strategy* should be useful to the student and teacher of courses related to the present war.

GEORGE MANNER.

University of Illinois.

South America and Hemisphere Defense. By J. FRED RIPPY. (Baton Rouge: Louisiana State University Press. 1941. Pp. 101. $1.50.)

Books on South America have been numerous indeed in the past two years—more numerous than reliable. For an authoritative, and at the same time compact, presentation of the importance of South America in an aspect of great current interest, however, J. Fred Rippy's volume here under review is outstanding. The book embraces the four Walter Lynwood Fleming Lectures in Southern History given early in 1941 by Professor Rippy, each chapter representing one lecture. The author presents in lucid and facile style South America's rôle as a part of an integrated Western Hemisphere. In Chapter I, "The Evolution of the American System," he sketches the continent's external political relations since inde-

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pendence and the prospects for an American system based on "harmony, mutual assistance, and solidarity against aggression" and "founded on the belief that peoples of different races and cultures may live together in peace, and on the determination to resist the aggressions of conquerors who have renounced such humane principles and have based their policies on intolerance, hatred, treachery, violence, and terror."

Chapter II sets forth the vast economic resources of South America with amazing clarity for so broad and sweeping a survey—as also the political conditions. The continent's commerce is treated in Chapter III. General trade statistics are shown in such a way as to indicate clearly the trends. Special emphasis is put on the Nazi trade offensive of the 1930's and on the difficulties and insecurity of one-way trade with the United States. This is followed by an analysis of major export commodities. In the final chapter, the author discusses at some length the often wildly exaggerated and visionary ideas of nineteenth-century North Americans as to the actual wealth of the golden land, especially of the tropics, and then surveys, with (the present reviewer thinks) perhaps too much statistical detail, its twentieth-century counterpart, the era of South American bond investment in the 1920's.

Many readers, no doubt, will regret that the policy of the publishers precluded use of footnote citations and of a bibliography. Had these been included, the scholar and the general reader as well might more readily have followed the trails blazed by Professor Rippy in his pioneering. Apparently Professor Rippy has realized this, too, for in another place (articles in the *Journal of Commerce*, April and October, 1940) he has taken pains to give the various pertinent citations. As it stands, however, the greatest single value of the Rippy study is the presentation in brief form of an authoritative work on which the intelligent, but usually uninformed, general public may safely rely.

LEWIS W. BEALER.

Berkeley, California.

The Failures of Peace. By KENT FORSTER. (Washington, D. C.: American Council on Public Affairs. 1941. Pp. 159. $2.50.)

Those who support the thesis that the march of history is impelled principally by the character and determination of a handful of strategically placed individuals will receive aid and comfort from Kent Forster's handling of his subject. In a book heavily ballasted with documentary evidence, the author meticulously traces the source and progress of a score of efforts made between 1914 and 1918 to effect a compromise peace between the Entente and Central Powers. Several promising opportunities for peace presented themselves during the war: in 1916, when the failure at Verdun began to shake the confidence of the German people in the in-

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fallibility of the High Command, and when the outlook for the Entente was darkened by the collapse of Rumania; in 1917, when the Dual Monarchy desperately desired peace; when the German Reichstag in a peace resolution declared itself opposed to annexations; when Russia collapsed, and when Briand, Prince Sixtus, Gasparri, Pacelli, von Kuhlmann, von der Lancken, Villalobar, and dozens of others labored energetically to discover bases for the opening of negotiations.

Why did the various efforts fail? According to Forster, the problems raised by the war, difficult of solution as they appeared, would not have been insoluble except for other factors: (1) lack of popular control over foreign affairs (most of the peace feelers were never revealed to the several publics); (2) the fear that a proposal for peace emanating from one combatant might be interpreted by another as a sign of weakness; (3) the fear on the part of both diplomats and militarists of the effect on home morale of a breakdown of peace negotiations (war-weary people might refuse to continue the struggle). These were elements which weighed heavily against the labors of the peace-minded. But they were overshadowed by the personal ambitions of a dozen or more occupants of high office. "Peace was not made without victory, because the decision rested with men who were unwilling to make it any other way." Their ambitions and convictions were dictated by conditioning in the pre-war diplomacy, by their "nationalistic fanaticism," by their desire for territorial and diplomatic spoils, and by their fear that peace with victory provided the only surety that their governments would not fall. The last of these cannot be overemphasized. A government which could not justify to its people long, horrible years of war could not hope to retain their support. And by what means other than by territorial gains could such justification be established?

Perhaps there is a lesson to be learned. While still recognizing the impossibility of reaching a viable agreement with the present leaders of Germany, it might be a wise policy to control and check the "*á outrance*" elements in the present conflict. This is the view taken by the author, who concludes that "there is another Germany, which cherishes the concepts and methods of decency and peace." When the moment for compromise with that Germany arises, "the forces of ultranationalism must not be permitted to triumph again, as they did during the years 1914–1918, to create the Versailles of 1919." This study impresses one with its skillful integration of a superabundance of material drawn from very numerous and diverse sources, as well as with the cogency of the conclusions deduced therefrom.

VERNON O'ROURKE.

Swarthmore College.

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BRIEFER NOTICES

AMERICAN GOVERNMENT AND POLITICS

In the revised edition of his *American State Government* (D. C. Heath and Co., pp. xv., 944, $4.00), W. Brooke Graves continues his penetrating studies of our commonwealths in action. The seemingly forbidding length of the book is accounted for in part by the completeness of the lists of references, and by the appendix, the table of cases, and the index—some 160 pages in all. Professor Graves has achieved a commendable balance in the writing of this book. Adequate treatment is given to the formal, structural, and relatively static aspects of state government, but rather more than the usual amount of attention is given to the states in transition. Careful scholarship and detailed description are relieved by an appreciation of social dynamics. Structure and form are used as points of departure for discussions of problems of efficiency and social change. The importance of the state as a separate entity is emphasized without inveighing against the trend toward centralization. The changing position of the states in the Union is portrayed realistically without indulging in gloomy predictions as to the future of the federal system. Despite a deep and sustained interest in state government, the author seems to be entirely free of bias on the subject of state-federal relations. He occasionally shows some concern for the diminishing powers of the states, but one finds no nostalgic longing for the good old days of the "sovereign" states. Indeed, it is clearly pointed out that the states, useful and necessary as they may be, cannot disregard demands for efficiency and improved social services without suffering further losses of power and prestige, and that, if they are to remain vigorous governmental entities, they must learn to coöperate more effectively with each other and with the federal government. No longer can they afford to leave all initiative to Washington. The book presents state government as just one phase—though a very important one—of the government of the nation, and this is as it should be. Because of its completeness, the treatment threatens to become ponderous at times, but the instructor who wishes to emphasize the problems of state government as well as structure and function will find this a very useful text.—ROGER V. SHUMATE.

By analyzing *The Economics of American Defense* (W.W. Norton and Co., pp. 344) in terms of fundamental economic principles, Seymour E. Harris provides an indispensable antidote to the bewilderment produced even among experts by the rapid changes in the magnitude of the defense program and its kaleidoscopic effects. A succinct survey of economic conditions in the years 1933–40 and an excellent statement of the basic economic problems involved in defense lay the background. Recognizing

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that plant capacity, capital equipment, and productivity form the real backbone of military strength, Part II puts the case of "our industrial potential." How to enlist these factors and carry them to maximum achievement by fiscal policy, and at the same time avoid the dangers of attending financial maladjustments, forms the substance of Part III in the analysis. The use of alternative suppositions and policies not only reveals the true nature of economic processes, but is an extremely useful device in aiding the reader to follow theory into practice. Part IV, on the "International Aspects of Defense," deals mainly with foreign exchange policies and practices in the days of lease-lend, and although less instructive now that the United States is itself at war, remains useful wherever international procurement of raw materials must be met by fiscal accounting. Since post-war problems will depend upon the war effort which has just begun and upon the subsequent course and outcome of the struggle, the discussion of this aspect in Part V deals chiefly with general principles and probable conditions. Of greater importance at this stage is the concluding criticism pointing up the defects of the defense program, for there are lessons here which Congress and the Administration have not yet learned, although now that the country is at war, continued blundering is likely to prove costly and perhaps tragic. The editorial jerkiness arising from the incorporation of previously published magazine articles is sometimes disconcerting, but will not detract from the book's usefulness to the trained thinker to whom it is addressed.—GEORGE H. E. SMITH.

Those interested in the legal aspects of our economic mobilization will find *American Economic Mobilization; A Study in the Mechanics of War* (reprinted from Vol. LV, *Harvard Law Review;* Plimpton Press, pp. 109, $0.40) practically indispensable for the 1939–41 period. The pamphlet is chiefly made up of four extensive chapters, on procurement (concerned mainly with procedure under government contracts), priority control, price control, and commandeering. It covers in meticulous detail the legal authority for the government's action in these fields, citing and discussing the relevant constitutional provisions, statutes, and executive orders. It describes and evaluates the effectiveness of the machinery for administration and enforcement, including the periodic overhauling and modification of this machinery. The pamphlet is necessarily an interim report. For example, it points out the evils of dispersed authority, but was printed before the War Production Board under Donald Nelson was established, which corrected some of these evils. It deals very briefly with allocations, and with coördination of the demands of our allies with our own, both of which problems now loom as of prime importance. But it does point out clearly some important remaining difficulties, such as the interdependence of wage, profit, and price controls, the necessary limita-

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tion of civilian demand, and the difficulty of maintaining individual rights —particularly due process—in an all-out war. A final section—"Conclusion"—is limited to two pages, which seems unfortunate, since the material is at hand for a much fuller evaluation of the soundness of the economic and legal theories underlying national mobilization.—HAROLD J. TOBIN.

Meno Lovenstein's *American Opinion of Soviet Russia* (American Council on Public Affairs, pp. 210, cloth $3.25, paper $2.75) is a summary and analysis of opinions on Russia expressed by American labor journals, business and trade periodicals, learned journals, general magazines, books, newspapers, and government documents. The time covered is divided into four periods: 1917–21, 1921–29, 1929–33, and 1933–40. In all of these periods, most of the expressions of opinion were hostile to Russia and without any adequate appreciation of actual developments. Only the *Nation* and the *New Republic* seemed to deal with developments objectively over the whole time. Hostility to Russia abated somewhat in the later periods in some circles, but not in others. Particularly depressing is the revelation of the failure of the economic and other learned journals to appreciate the significance of Russia's experience and deal with it as it deserved. Dr. Lovenstein has read much and has documented his book with many footnotes, but most of his newspaper references are from the *Literary Digest.* His conclusion that American opinion of Soviet Russia is largely determined by events of the moment in the United States is open to question. When we consider that the opinion of the mass of the people would be based on what they read in the channels of communication treated, we may conclude that this study is chiefly significant for the proof which it furnishes of the difficulty which a people has in forming intelligent opinions on foreign affairs.—CHARLES W. SMITH, JR.

Fifty Years of Public Life (Duke University Press, pp. x, 422, $3.50), by Daniel C. Roper, is a somewhat stolid type of autobiography, which nevertheless manages to weave in a few personal glimpses and sidelights as it carries along its matter-of-fact story. It is based upon the political events and official activities with which the author was connected from his start as a member of the South Carolina legislature in Tillman's administration, through various functions at Washington, including the secretaryship of commerce, and finally as minister to Canada under Franklin D. Roosevelt, not to mention national party conventions and election campaigns. Mr. Roper caught little of the flair of a McAdoo or a Wilson or a Roosevelt, though he worked under all three. He writes seemingly as if he were a mixture of a bureaucrat, who cannot say very much, and a shrewd politician, who will not say too much. His work omits facts about the inside wheels of government, parties, and politics. It at times tanta-

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lizes the reader by verging upon important revelations, as in the account of the bargaining between the McAdoo-Garner element and the Roosevelt convention forces in 1932, with Roper as a go-between. But it soon regains the road of the known, the obvious, or the platitudinous. It gives praise and moral support to the political ideas of Woodrow Wilson and Franklin D. Roosevelt. It holds up a sort of human mirror, not completely clear, in which is reflected the growth of American government in the last fifty years. Mr. Roper did have many experiences, and many students will have to read his book, which is comparable in form and spirit to Oscar Underwood's valedictory, *Drifting Sands of Party Politics*.—H. C. NIXON.

The study entitled *Problems of Constitutional Revision in Illinois* (Illinois Legislative Council, Research Department Publication No. 43, pp. ii, 33) is an inquiry into the adequacy and present prudence of the Illinois constitution, to which only seven amendments have been added since 1870. As a method of determining the adequacy and continuing suitability of the constitution, reliance is placed upon the extent to which the document restrains legislative action and upon the manner in which these restraints operate—a test which the author agrees is not absolute and is not the only one which might have been applied. To this end, several provisions of the constitution are examined for their characteristics. For example, it is shown that the method of submission of amendments, the majority vote required for their adoption by the people, and the type of ballot used in elections have thwarted several legislative proposals for revising the constitution. Moreover, it is pointed out that those sections of the constitution which deal with legislative apportionment, the judiciary, local government, banking, and revenues prevent reforms long overdue in these fields. Changes are suggested which would give these sections that flexibility required in order that legislative enactments under them may provide for the needs of a changing society. Comparative data on the situation in other states and six statistical tables add to the value of the report, which should be of special interest to students of constitutional reform.—WILLIAM H. COMBS.

Bennett M. Rich's *The Presidents and Civil Disorder* (Brookings Institution, pp. x, 235, $2.00) shows that civil disturbances that have required presidential intervention have taken place in the United States from the time of the Whisky Rebellion to the strike in the North American Aviation plant. In his study, Mr. Rich gives both a running account of the events concerned with presidential intervention and an interpretation of the rôle played by the presidents in those instances where the armed forces of the United States were used to secure order. At the end of each chapter, the author's appraisal of the actions of each individual president

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is of special worth. One chapter is devoted to the sources of presidential authority for the use of troops. At the present time, when the very success of the war effort depends to a great extent upon unity on the home front, the volume holds added significance. Americans can and do unite at times of great crises. Under normal conditions, however, differences of opinion are bound to occur. "Civil disorders are seldom caused by trifles." It is heartening to know that Mr. Rich concludes that the presidents have been temperate in the use of troops and that the most frequent practice is to use the armed forces only as a last resort. This volume is a noteworthy example of the productive research work now being done in our graduate schools.—ROBERT S. RANKIN.

The Tennessee Valley Authority has coöperated with several state agencies in the T.V.A. region in making studies of local government. The most recent of these is Lloyd B. Raisty's *Municipal Government and Administration in Georgia* (Institute for the Study of Georgia Problems, University of Georgia, pp. vi, 293, no price). The study contains not only an analysis of charters, statutes, reports, and court decisions, but also the results of a field study which included visits to 123 municipalities. Most of the study is factual and descriptive, although in admirable summaries at the ends of chapters the author is critical of certain practices and makes suggestions for improvements. Georgia municipalities operate under special charters; there is a large amount of special legislation; the form of government is unstable, although charter changes must be approved by the voters in cities of less than 50,000. There is no uniform budget, accounting, or reporting law. These and other matters are determined for each city by special charters. Education, health, and welfare play a subordinate rôle in municipal affairs, and many Georgia cities do not participate at all in the educational function. Planning and zoning have been given very little consideration by the cities, and consequently are treated but briefly in this report. The study is well written, and the reading material is supplemented by sixty-one tables. There is an adequate index. The author achieves his announced purpose of providing a source of information for students, citizens, and officials, and the book should prove a valuable addition to studies on municipal government.—W. V. HOLLOWAY.

The publication of a second printing of *The Pulse of Democracy* (Simon and Schuster, pp. viii, 328, $2.50), by George Gallup and S. R. Rae, is an indication of interest in the general subject of public opinion polls. The writers, who are associated with the American Institute of Public Opinion, present a valuable analysis of the methods and results of the now famous "Gallup polls" sponsored by that organization, and demonstrate the unsoundness of many of the criticisms of the techniques used. The

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study stops short of the presidential election of 1940, and it is to be hoped that there will be later editions which will include the polls of that interesting campaign. In discussing the broader theoretical implications of opinion polls and their importance in a democracy, the authors write with less assurance and less satisfactory results. Their analysis leans too heavily upon Bryce and draws too little upon the new psychology. Faith in the accuracy of the Gallup polls as a reflection of public opinion does not necessarily follow from faith in democracy, as the authors seem to imply in their concluding chapters. The polls may "fill a real need in the existing structure of democracy" (p. v), but Mr. Gallup and Mr. Rae do not present a convincing case for their claim.—LOUISE OVERACKER.

In *America's Struggle for Free Schools* (American Council on Public Affairs, pp. vii, 276, cloth $3.50, paper $3.00), Dr. Sidney L. Jackson investigates "social tension and education in New England and New York, 1827–42." The preface indicates the self-imposed limitations of the monograph. The geographical frame of reference, excluding both the South and West, is rather inexplicable, but the chronological period is reasonably coincident with the Jacksonian era. Pursuing the social meaning of the "Common School Revival," Dr. Jackson examines the ideas of the "intellectual leaders," the professional educators, the rural publicists, and the urban-labor groups comprising the cultural-economic strata of the times. His analysis of the "intellectual leaders" who resisted "the rising, challenging Common Man" is particularly penetrating; on the other hand, his observations on the "Labor and City Protest Movement" seem superficial, even ambiguous. Drawing his materials mainly from "the contemporary public literature," the author presents an extensive bibliography of thirty-four pages, with sixty-two pages of references. The book is not intended as a definitive piece of work; rather, it suggests further studies in the American compound of democracy and education.—MARIAN D. IRISH.

In *Income as an Index of the Fiscal Capacity of Michigan Counties* (University of Michigan Press, pp. viii, 78), Marvin A. Bacon classifies the state's eighty-three counties as mineral, forest, farm, farm-urban, and urban, and analyzes their principal sources of income. He then applies seven different indexes to each county in an effort to find the best measure of local taxpaying ability (or the relative need for state aid). He considers assessed valuation the most practical index for a school district, and per capita supernumerary income (income in excess of that needed for living essentials) the best index for county relief grants. He ranks four other indexes: (2) per capita income, excluding income from government, (3) per capita income, (4) per capita assessed valuation, and (5) assessed valua-

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tion. He recognizes that complete equalization of local tax burdens and services may perpetuate inefficient and uneconomic units. Similar studies in other states would aid in finding scientific formulae for distributing state and federal aid.—WILLIAM L. BRADSHAW.

Like Bessie L. Pierce's studies of Chicago, Charles Hirschfeld's "Baltimore, 1870–1900: Studies in Social History" (*Johns Hopkins University Studies in Historical and Political Science*, Series LIX, No. 2 (1941), pp. xiv, 176, $1.50) is based on the thesis that American urban history should have a broad scope, emphasizing such fields as public education, industry, and charities; unlike the former, no separate chapters are devoted to city government itself. Nevertheless, the author recognizes the intimate relationship existing between public education and politics, quoting a report which pointed out in 1892 that "the board of school commissioners is therefore a product of the ward politicians." Some attention is also given to the pressure activities of organized labor and capital. Though the student of government will look in vain for any systematic treatment of Baltimore politics in Mr. Hirschfeld's monograph, a considerable amount of valuable background material may be found therein.—HAROLD ZINK.

A Library Classification for Public Administration Materials (Public Administration Service and the American Library Association, pp. xv, 501), by Sophia Hall Glidden, is based in part on a revision of the 1928 *System of Classification for Political Science Collections* by William Anderson and Sophia Glidden. Usefulness to special libraries in public administration has been stressed; hence administrative aspects of government, especially those developed greatly since 1928, and not adequately reflected in the Dewey or Library of Congress classifications, are strongly represented.—JOHN M. GAUS.

FOREIGN GOVERNMENT AND POLITICS

M. M. Knappen's *Constitutional and Legal History of England* (Harcourt, Brace and Company, pp. x, 607) is a concise textbook designed especially to be used in college courses in English constitutional history for pre-legal students. It is well planned and well executed for this purpose, and is built upon an unusually comprehensive outline. The material is first divided into six broad periods—the Anglo-Saxon, the Middle Ages, and so on. Each period is introduced with a general account of political, economic, and cultural history. Then follows for each period a systematic treatment of the machinery of government and the legal system. The latter is subdivided into the organization and jurisdiction of courts, procedure and the legal profession, and substantive law. The student who works his way conscientiously through this volume will get a broad under-

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standing of English history, with the emphasis upon the governmental and legal aspects. The material is necessarily much compressed. In spite of this, Professor Knappen manages to tell the story in an interesting style with a good deal of embellishment in the way of personal anecdotes and quotations from contemporary literature. College students are going to say that it is "good reading," but some of them will think that the author underestimates their powers of comprehension by sometimes explaining the obvious. The multiplication of cross-references is an unnecessary and unfortunate feature of the book. The preface, which in this case should be read first, is an unusually fine example of that branch of literature.—JOSEPH R. STARR.

A. H. McClintock's *The Establishment of Constitutional Government in Newfoundland, 1783–1832* (Longmans, Green and Co., pp. xvi, 246, $6.00) fills an important gap in the history of Newfoundland and casts a vivid light on a dark corner of the old colonial system. The Newfoundland fishery was long regarded as a nursery of seamen requiring annual voyages to produce sailors for the navy, and the trade was long dominated by the West Country merchants. Settlement was deliberately retarded in the interest both of the trade and the Empire. But "the eighteenth century wars were the salvation of Newfoundland colonization" (p. 12); annual voyages were interfered with, and the long arm of the law failed to catch up with settlement. By 1783, settlement was too well established to be uprooted. The half-century following marks the gradual transition of the island from the status of a seasonal fishery to a colony. Colonization, however, had its own evils: the navy still continued to govern or misgovern the colony; a colonial merchant class came to exploit settlers in place of the West Country merchant; and climatic conditions, poverty of resources, uncertainties of catch and price dogged the settlers. Toward the close of the period, local agitation and the growth of liberalism at home combined to give the island its first representative institutions. The volume, which is one of the Royal Empire Society's series, shows careful scholarship and balanced judgment. The style is clear, correct, and sensitive. A critical bibliography adds greatly to the value of the book. It is a pity that the author does not seem to have had access to Professor Innis's great study on the cod fishery. In price and appearance, the book is something of a war casualty.—R. A. MACKAY.

The Soviet Experiment (Richard Smith, pp. 120, $1.25), by Harry Best, is a popular and brief appraisal of the Soviet régime. Within the space of 120 pages, it covers a wide field of general discussion which includes an account of resources, economic antecedents of the Soviet Revolution, the fall of the Tsarist régime and the coming of the Soviet power, its accom-

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plishments in the field of agriculture and industry, education, religion, democracy, and foreign relations. Naturally, all of these topics are dealt with in a superficial manner, yet the little book is to be recommended to persons who desire to obtain, in a painless manner, a general idea of the Soviet state. *The New Russian Empire* (Tuttle, Morehouse and Taylor Co., pp. 114, $3.50), by the European scholar Andrew Efron, is an erudite study of the legal and political foundation of the Soviet state since Stalin's assumption of power. The author does not confine his study to the Soviet Union, but reconsiders "many traditional notions and concepts" of modern political theory. Dr. Efron has a profound knowledge of political philosophy, which is expressed in his discussion not only of the Soviet state but of other forms of contemporary political theories, especially Nazism. Throughout the work the comparative method is used. In the four chapters which the book contains, such topics as dual law, contribution to the theory of law, collapse of Soviet democracy, and the New Empire are discussed in an impeccably scholarly manner. The work is not one for the layman, but it should command the attention of those interested in contemporary political theory. A general bibliography and index are included.—B. W. MAXWELL.

Much has been written on nineteenth- and twentieth-century Spain, but the great bulk has been of a light and frothy nature, with writings based directly on documentary evidence few and far between. Arnold Verduin's *Manual of Spanish Constitutions; Translations and Introductions* (Ypsilanti, Mich., University Lithoprinters) is one of these exceptions. This 99-page book includes, in handy form, exact translations of the Spanish constitutions of 1808, 1812, 1837, 1845, 1856, 1869, 1876, and 1931, along with the Royal Charter of 1834 and the Republican Project of 1873, arranged in chronological order. Each document is preceded by a brief factual introduction giving the setting amid which it was drawn up, along with citations to published sources of the originals. All in all, the *Manual* is one of the most convenient and valuable source-books of its kind to appear in recent years.—LEWIS W. BEALER.

INTERNATIONAL LAW AND RELATIONS

The World's Destiny and the United States; A Conference of Experts in International Relations (R. H. Donnelly and Sons Co., pp. xx, 309, $1.00), is a report written by Henri Bonnet on a conference held in April, 1941, by the World Citizens Association, which has built a program for the post-war order upon the premise that the interdependence of the modern world calls for world citizenship as both a sentiment and a political reality. However ambitious the general program, the merit of this important book lies largely in the fact that it presents, not a group of revela-

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tionists, but of distinguished scholars and practitioners in international affairs, discussing soberly, frankly, and with no little divergence of opinion the many formidable problems which radical reform in international relations raises. While recalling in some respects the old League to Enforce Peace, the group is separated from it by a host of disillusionments, and in fact searches the history of the League of Nations for errors and warnings. It thus arrives at a plan inverting the theory of the League, which was weak in actual powers but top-heavy in their execution. The new world state is envisaged as having final sovereignty, the function of making world law and of supervising matters of common concern, and a monopoly upon armed power to enforce arbitration and peace. But because the post-war problems will require "a more elaborate and a more decentralized structure" than the old League, the new world state will combine universalism with regionalism by delegating the execution of the more local functions to nations and regional groups which preserve for world society not only cultural differentiations but local initiative and expertness. So, too, the emergence of the world state is conceived of as an evolution through the common organs of the democracies at war and, still later, through regional associations which become completely integrated only when the heart of man is ready for world citizenship. A prerequisite of the entire development is the full coöperation of the United States, weaned away from isolationism by the tutelage of its own self-interest. It would be irrelevant as well as trite merely to point out the obstacles confronting the fulfilment of this design, which represents not a prediction but a valuation. The only legitimate criticism is that since our disasters may have come from hypertrophied nationalism rather than from the nation-state itself, the prevention of their recurrence may not require a reform that is as drastic, difficult, and experimental as is the world state.—ALBERT K. WEINBERG.

The title of R. W. G. Mackay's *Peace Aims and the New Order* (Dodd, Mead and Co., pp. 306, $2.50) promises both too much and too little. The work, as its sub-title indicates, outlines the case for European federation, and proposes the text of a constitution for a United States of Europe, but does not deal with peace aims or a new world order in general. As a discussion of the more specific problem, the work seems rather well informed, thorough, and restrained. It fails, however, to deal adequately with the crucial problem of relations between any European federation and the world union which is admitted to be necessary (p. 127), and fails to see that without solution of that problem the proposal for a European union, even—or especially—if it could be realized, would be not only valueless in the larger view of the future of international relations, but positively dangerous. This shortcoming seems to be intimated (pp. 15, 21) in the

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foreword by Norman Angell. The author also seems to exaggerate the virtue of constitutions and organizational arrangements. He says (p. 88): "If an international authority is created with a Legislature, an Executive, and a Judiciary, and such matters as defense and external affairs are transferred to it by the states of Europe (*sic*), that authority will be able to exercise power." Of two things, one: either the states are willing to act together to repress aggression or they are not. If they are not, they will not make the grant suggested or live up to it if they do; if they are so ready, they can utilize to that end a loose system of coöperation. *In such fundamental issues as security*, organization and procedure are of small moment. Once more it seems that too much attention is given to mechanical rather than spiritual aspects of the problem, both in reviewing the League experience and in prescribing for the future. Nevertheless, the book is stimulating, if not convincing.—PITMAN B. POTTER.

The latest volume in the series, *World Economic Survey* (League of Nations Economic Intelligence Service, pp. 275, $2.50) covers almost two years—from the autumn of 1939 to the summer of 1941. It concerns itself generally with "the shift from welfare economy to war economy, and especially the organization of production and distribution of goods by the state." This shift and organizational development is summarily traced and stated, in so far as data have been available, for selected principal modern nations, illustrating similarities and differences between those in which the state has achieved complete control, as in Germany and conquered countries, with those in which, as in the United States, the transition is just getting under way. An opening chapter reviews the characteristics of the whole change: depression, revival through armament expenditures, rising prices, intensive mobilization of productive resources, shifts in employment, development of labor shortages, and other items. Remaining chapters then examine the war-time control of production in terms of organization, mobilization, and regulation of labor and agriculture; control of consumption through restrictions and various types of rationing; governmental spending, taxing, and borrowing, and the data on money, prices and interest, including techniques of price control; international monetary relations, especially those of the British Empire and the United States; raw materials, foodstuffs, industrial activity, and transport. Numerous tables and charts set forth factual data. A significant general conclusion apparent from reading this material is that the Axis Powers, while away out ahead in completing the transition, not only are far weaker in most major productive resources, but already in 1939 were showing signs of industrial fatigue, accompanied by an increasing decline in man-hour rates of production. The volume is a highly useful survey of the period and a handy reference manual for selected groups of data.—HARVEY PINNEY.

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For some years the University of Michigan has been noted for distinctive special summer work in aspects of Oriental and Renaissance culture and in linguistics. In 1941, the Rackham Graduate School offered a formal course of study on "Public Policy in a World at War," the twenty lectures of which were published in *The Annals of the American Academy of Political and Social Science*, Vol. 218, November, 1941 (pp. 193, $2.00). Professor Jesse S. Reeves opened the series with a penetrating discussion of the interrelation of the domestic and foreign policies of the United States, emphasizing that "no country will knowingly adopt a foreign policy contrary to its national advantage" (p. 2). Ambassador Hu Shih analyzes "ideologies," identifying twenty-one characteristics of totalitarianism and drawing contrasts between it and modern democracies which are "content with piecemeal processes of social, economic, and political reform" (p. 31). The diplomatic *débâcle* before Munich is explained by Count Carlo Sforza in terms of the inability of Britain and France, 1931–1938, to appreciate the seriousness of the European situation and to take a firm stand to restrain Mussolini and Hitler. The prospect for a union of democracies is portrayed as dependent upon several contingencies: Axis victory, with no union possible; stalemate, after a long and bitter war during which belligerent and non-belligerent democracies alike would find it desirable to work together in close collaboration; and (written before the appearance of the United Nations on the scene) British victory, with complete financial exhaustion of Britain and allied democracies and consequent eagerness for both political and economic protection. Considerable space is properly devoted to economic problems, to the relationship of the United States to the war (summer of 1941), the requirements of a war economy, and dilemmas of democracy.—WILSON LEON GODSHALL.

The University of Chicago Press has published the 1941 Lectures on the Harris Foundation under the title of *Inter-American Solidarity* (pp. xii, 228, $1.50), edited by Walter H. C. Laves. The lectures cover several different phases of a very broad subject. In the first of the series, under the title "What Have the Americas in Common?," the Cuban historian Herminio Portell Vilá emphasizes democracy as a basis for inter-American coöperation. He discusses the rapid progress being made toward the elimination of language barriers and deals briefly with some of the other racial and social problems which the Americas have in common. Other aspects of this same general question are dealt with by Dr. Daniel Samper Ortega in an enlightening and frank treatment of the problem of cultural relations from the point of view of a South American friend of the United States. There are two lectures on economic questions: "Inter-American Trade and Financial Problems," by Eduardo Villaseñor, who outlines

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the history of Latin America's economic relationships with the outside world and advocates the development of Latin-American resources and industry by North American capital; and "Raw Materials and Inter-American Solidarity," by Arthur R. Upgren, which deals somewhat more specifically with one very important aspect of hemisphere trade. Mr. Upgren believes that there should be an effort to improve intra-hemisphere markets, but that any attempt to achieve hemispheric self-sufficiency is undesirable. He advocates a two-fold solution of the "problem of raw materials and inter-American solidarity": (1) "the maintenance of the fullest possible output by the industrialized areas of the hemisphere," and (2) "the maintenance of as free as possible a trade with other specialized raw material areas of the world that are not yet victims of the rampant forces of aggression." Major George Fielding Eliot discusses the problem of hemisphere defense, which, he says, depends upon the command of the sea by the United States and Great Britain; and Professor Scott's lecture deals with "Canada and Hemispheric Solidarity." "Latin America," he says, "has always seemed remote to Canadians," but the Dominion's contacts with that region are increasing and there are many ways in which its coöperation in the Pan-American movement could be helpful. Professor Rippy concludes the series with a brief lecture on "Pan-Americanism and the World Order."—DANA G. MUNRO.

One of the thorniest obstacles to Uncle Sam's good neighbor policy arose when foreign-owned properties were taken over by the Mexican government. The resulting complicated problem, whose roots lie deep in the political, economic, and social history of the land south of the Rio Grande, is well handled by Wendell C. Gordon in his *The Expropriation of Foreign-Owned Property in Mexico* (American Council on Public Affairs, pp. viii, 201, $2.50). As the author points out, two main issues are involved: (1) the clash between private property rights and national welfare on the one hand, and (2) the clash between sovereign power and international law on the other. Fortunately, there was no actual question as to the right of the Mexican government to expropriate the landed estates and oil properties within its boundaries so long as it provided just compensation and did not discriminate in favor of its own nationals. The real issue, as far as the United States was concerned, centered about the demand of the State Department for compensation. Time was when marines and destroyers might have been used by an exasperated Washington to make our demands effective. But today, with infinite patience, the State Department, to its everlasting credit, works out a solution in a peaceful manner. In his well-documented and interesting study, the author passes in review the domestic, social, legal, and economic aspects of foreign-owned property in Mexico and then turns to a consideration of expro-

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priation under international law. His account is an impartial one. He demonstates that Mexico, if her resources were to be utilized for the national welfare, had a real case. But the capitalists, who had invested their millions in Mexico, also had a case. This book presents a fine background for an understanding of both points of view.—FRANCIS O. WILCOX.

Whether Clarence H. Haring's *Argentina and the United States* (World Peace Foundation, pp. 77, cloth $0.50; paper $0.25) is a primer on Argentine-American relations or on Argentina itself is never made quite clear. Since the two subjects are best understood when studied together, Mr. Haring's pamphlet is a useful introduction to this frequently misunderstood segment of our foreign relations. Two chapters on Argentine history and two on the nation's economy provide a necessary background for the final chapter on Argentina's position in the present world crisis. In the wake of the Rio de Janeiro conference, this discussion has a heightened interest. If Mr. Haring does not make crystal clear the wellsprings of Argentine foreign policy, his evidence shows an economic and ideological situation so complicated as to refute any "clear and simple" explanations by anybody else. As for the future, the author hardly expects this proud and sensitive nation to shift its foreign policy overnight; but he does believe that Argentina is slowly moving in a pro-Ally direction.—WILLIAM T. R. FOX.

The political and military aspects of war tend rather easily to dominate our thinking. Thus the appearance of *The Rice Economy of Monsoon Asia* (Stanford University Press, pp. 358, $3.50), by V. D. Wickizer and M. K. Bennett, is doubly welcome. It is a basic study in the food of half the world, and thus a significant contribution to the economics of the present war and the world that shall emerge from it. This is the third major publication of the Stanford Food Research Institute, so ably directed by Dr. Joseph S. Davis. It embodies studies in rice economy initiated in 1927. The present book is largely the work of Mr. Wickizer. In content, it is thoroughly comprehensive, covering such subjects as environment of world rice economy, features of lowland-rice culture, marketing and milling the crop, the export and import markets, rice in the Asiatic diet, price factors, government intervention and price-control, interpretations of consumption trends since 1920, potentialities for expansion in rice economy, and finally trends for the future. Excellent maps, charts, and critical notes on the sources complete the study. There are some minor typographical errors, such as "Amori" for Aomori (p. 18). Among their conclusions, the authors note that in recent decades "population growth [in Monsoon Asia] has been more rapid than the expansion of the area

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devoted to rice and the increase in yearly production. . . ." Thus there has been a quantitative and qualitative deterioration in the diets of huge numbers of people. ". . . if expansion of the aggregate rice output can be effected only with difficulty, the question of the future adequacy of food supply may be raised for rice in Monsoon Asia more appropriately than it was for wheat by Sir William Crookes in 1898."—PAUL H. CLYDE.

Once in a while a "timely" study proves to be out of date by the time it is published. Such is partly the fate of Catherine Porter's *Philippine Emergency* (American Council, Institute of Pacific Relations, pp. 78, $0.15). Published late in 1941, it in some ways reflects the same complacency which proved so detrimental to our national interests. An illustration of this is found in a passage taken from a brief discussion of the possibilities of Japanese attack. "In fact, there are several reasons why such a direct threat has been considered unlikely. . . ." With the exception of this attitude, running throughout the pamphlet, the study is an excellent summary of the Philippine problem. The difficulties of defending the Philippines are stated clearly, and possibilities that have now materialized in the Bataan peninsula are suggested. A very fair explanation of what the United States has done for the Philippines in the way of sanitation and education follows. There is a hint of the selfish story behind the Independence Act of 1934, and a plea is made for a policy based on loftier motives in the future. "The United States gave the Filipinos something they wanted—a promise of independence—largely because a small group of Americans wanted to be rid of the islands: it should not go back on that promise because another small group of Americans now desires to retain them [because of the mineral wealth now known] and is trying to convince the American people that the Filipinos have had a change of heart." A discussion of the economic dislocation of Philippine economic life because of the Independence Act is valuable because of its restraint, even though painting a black picture for the future. The large alien population of the islands, together with the diversified native population, suggests possible difficulties. In so far as the present situation has not destroyed the assumptions of the author, this pamphlet is probably as compact, accurate, and valuable a discussion of the Philippines as the layman can find.—ANDREW E. NUQUIST.

From the Battle of Britain in the autumn of 1940 to the capture of Kiev in the fall of 1941, many significant events occurred—events which readily lose their meaning if they are not viewed in the total framework of World War II. The fascinating story of these events is recorded in Edgar McInnis' *The War: Second Year* (Oxford University Press, pp. x, 318, $2.00), a book which weaves together in admirable fashion the many complex

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threads which form the pattern of the world's second year at war. Various phases of the conflict are considered: the military, the diplomatic, the economic. All fronts are visited: Britain, Germany, America, the occupied countries, the Far East, the Mediterranean, the Atlantic, Africa, Greece, the Near East, Russia, the Balkans. Numerous important incidents are analyzed: the Pact of Berlin, the Lend-Lease Act, the Hess episode, the Atlantic Charter. While the narrative proceeds in chronological fashion, the author has sifted and arranged his facts so that they make sense even to those who have not followed the war closely. Of no little aid are the documentary appendix, the chronology of events, and the eight maps, without which most arm-chair strategists of the present war would be completely lost. The book, which is a sequel to Professor McInnis' *The War: First Year*, makes an excellent companion volume to Shepardson and Scroggs, *The United States in World Affairs in 1940*.—FRANCIS O. WILCOX.

POLITICAL THEORY AND MISCELLANEOUS

In *Reason and Revolution; Hegel and the Rise of Social Theory* (Oxford University Press, pp. xii, 431, $3.75), Herbert Marcuse devotes more than half of his book to the presentation of Hegel's thought. He introduces his subject with a chapter on the historical and philosophical setting of the times. He then analyzes Hegel's early philosophical writings, and in turn, *The Phenomenology of Mind*, *Science of Logic*, *Philosophy of Right*, and *Philosophy of History*, showing us not only his ideas but tracing their development. The second part of the book deals with Kierkegaard, Feurbach, and Marx; with Positivism and the rise of sociology—Saint Simon, Conte, Stahl, and von Stein; and finally with the influence of Hegel in England, Fascist Italy, and Nazi Germany. Marx, according to Mr. Marcuse, is the true heir of Hegel, for he alone, of the above writers, "penetrates to the origins of the individual in the process of social labor and shows how the latter process is the basis of man's liberation" (p. 262). Mr. Marcuse has given us a most useful and timely summary of Hegel's thought, although the writing is rather heavy and frequently lacks direction and a sense of pattern. His analysis of Stahl and von Stein should be of more than passing interest to English readers. He has done well to show us the limitations of sociology. So, too, has he done well to show how Gentile perverted Hegel, and how Alfred Rosenberg and Carl Schmitt, the "philosophers of National Socialism," have opposed Hegelian ideas. At the same time, many will have difficulty in accepting the basic Hegelian doctrine, which seems to be fundamental to Mr. Marcuse's own thought: that "contradiction is the root of all movement and life" (p. 147). This is never proved, nor is it self-evident. Nor will most readers find much meaning in the dialectic, as Mr. Marcuse is able to do, on the ground that it is so

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general that you can make it serve any content that you wish to pour in. Trotskyites and Stalinites can draw with ease diametrically opposed conclusions from the same principle. Mr. Marcuse accepts without question Marx's analysis of labor and the labor theory of value, and the whole scaffolding of Marxian thought that rises from it. He shows little awareness of the criticisms that have been made of this analysis. As with most writers who have a deep sympathy with Hegel and Marx, the author frequently stands for absolutes, and is not averse to sweeping statements. —Benjamin E. Lippincott.

The main thesis of *The Theology of Politics* (Oxford University Press, pp. xvi, 164, $2.50), by Nathaniel Micklem, is, first, that "all political problems are at bottom theological," inasmuch as "every political system rests upon some doctrine of man and of the value and meaning of human life"; and secondly, that in the present crisis the democracies are at a disadvantage in that they fail to realize, or have forgotten, the fundamentally theological significance of the democratic philosophy as an expression of Christian teaching. The purpose of the book is accordingly to furnish an effective answer to Marxist materialism and Nazi racialism in the form of a doctrine of society which, "because it makes its appeal to the reason and conscience of humane and civilized men," "may be apprehended as the will of the living God revealed in the teaching of Jesus Christ." The basis of this doctrine as opposed to Marxian communism and National Socialism is the concept of man as a rational (under which the author includes also a moral) being. His discussion of the Marxian concept of the individual is more penetrating than one usually finds, as is also that of National Socialist morality. In refutation of the relative concept of right as taught by National Socialism, the author cites the ultimate convictions of the "rightness of right" and of the "goodness of goodness," which he believes are held by "the generality of educated men." He finds these to be as "objective and certain as are any facts in the physical world," and to be "matters . . . of knowledge, or we have no knowledge." Upon this foundation he builds a doctrine of the state, of human rights, and of the post-war order, which, grounded in the Christian faith, he believes to be valid, and also to constitute what he holds essential in the present emergency—"an articulated philosophy of the state and of society more rational, more attractive, and more human than that of our enemies," and thus offering "the impulse of religious conviction at least as passionately held as the pseudo-religions of Germany and Russia." With some parts of the presentation, such as that dealing with the ever-difficult problems of the "alleged rights of man" and of sovereignty, the reviewer finds it impossible entirely to agree. It is believed also that certain influences, such as that of the Stoics in their emphasis on human

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dignity and on the law of right reason, have been underestimated. There is much need, however, for a reëmphasis on the fundamentally Christian significance of the democratic philosophy; and the book, although perhaps bordering at times on the dogmatic, makes an important contribution at this time, when if civilization is to survive, morality and religion in the true sense must take their proper places in the life and thought of man.—ELLEN DEBORAH ELLIS.

Silas Bent McKinley's *Democracy and Military Power* (Vanguard Press, pp. 350, $3.00) is an enlarged edition of a book first published in 1934. The two chapters added contribute very little to the value of the book, consisting merely of a résumé of military developments since 1934, with a warning that democracy is threatened by the program of the Axis. But the original chapters contain a statement and an attempted verification of a vitally important thesis, one which deserves the emphasis given by the re-publication of the book. This thesis is that the common man can secure a significant place in political affairs only when he has a significant place in military affairs, that "the predominance of infantry is essential to establish and preserve democracy," although "it does not necessarily carry with it that result." After stating this point of view in the first chapter, the author devotes the remainder of the book to an attempt to prove it valid. He traces the rise and fall of democracy in Greece and Rome, and deals with its development and present position in the Western World, directly relating its course throughout the centuries to changes in military techniques. The warning is sounded that the airplane and the tank are undemocratic implements of war, and that even the infantry will not serve effectively as a bulwark of popular government when it must be so highly trained as to be professionalized. To the reviewer, the argument is convincing and extremely important. While the broad historical sketch provided by Mr. McKinley is helpful, one need only look at the fate of democracy in Spain to realize that if those who have a majority of the votes wish to preserve democracy, they would better see to it that they possess a preponderance of military power. It is easily possible that wherever democracy exists, the majority might vote for measures absolutely unacceptable to the minority, in which case the decision would be made by force of arms. Then democracy could survive only if voting power is a fairly accurate reflection of military power. Parties, in other words, are potential armies which are expected to do their fighting in a non-violent way around the ballot box; but whenever the party defeated at the polls thinks it could win on the field of battle, democracy is endangered. And the prospect of military victory by the minority party is increased when weapons become intricate and costly and fighting becomes a skilled profession.—VERNON VAN DYKE.

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Studies in Political Science and Sociology (University of Pennsylvania Press, pp. 194, $2.00) is a collection of eleven papers presented on the occasion of the University's bicentennial celebration. Dr. Hu Shih suggests and hopes that pragmatism may at last produce a political philosophy along the lines of the instrumentalist theory of logic. Drs. Newton Edwards, Mark A. May, and William G. Carr discuss, respectively, the evolution of American democratic ideals in education, the reasons for our failure to achieve them, and a program for their attainment. Professor William E. Rappard, tracing the American origins of the Swiss constitution of 1848, shows how reluctantly, yet successfully, the Swiss adopted our bicameralism and federalism. Dr. Arthur C. Cole provides a brief account of minorities in American history. Dr. Louis Wirth contributes an excellent analysis of recent trends and forces affecting the status and prospects of our minority groups. Dr. Carl Kelsey examines the possibilities of toleration for minorities in a democracy, and Dr. Alvin S. Johnson surveys the consequences of mass immigration. Dr. Philip E. Mosely thinks that repatriation, earlier employed to some advantage with regard to Greek, Turkish, and Bulgarian minorities and recently resorted to in Poland, is likely to be extended as a method of dealing with the minority problem, particularly in totalitarian states. The singularly acute problems of today's European refugees in both of the Americas are sympathetically presented by Dr. William Haber, who also indicates the types of services being rendered by the principal refugee organizations in the United States. Each of these short essays represents a distinct contribution to its particular subject.—CARLTON C. RODEE.

Although *Ethics and Social Policy* (Prentice-Hall, pp. 522, $3.00 college, $4.00 trade), by Wayne A. R. Leys, is concerned primarily with the problems of ethics, it is highly deserving of attention from political scientists. A wide search would be necessary, for instance, to find a better statement of the rôle of the courts in the formation of public policy than is contained in Chapter III. Other chapters are a valuable antidote to the confusion that plagues thought and action concerning social policy, especially the confusion of normative and descriptive opinions. Perhaps the most original contribution of the book is an attempt to clarify and correct the views of Machiavelli, Marx, Hegel, Nietzsche, Dewey, and T. V. Smith on the relation of government to class conflict. The last five chapters discuss the extent of participation in policy-making. After contrasting religious authoritarianism with totalitarianism and traditional democracy, the author concludes by criticizing both social experimentalism and the *Führer-prinzip*. Dr. Leys has drawn heavily on social science materials as well as philosophy, but has managed to carry on his discussions in a non-technical style. For this reason, his book should be useful as collateral

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reading in political science courses and as a basic or supplementary text in survey courses.—GLENN G. WILTSEY.

To many Americans, India is an enigma, a paradox. Krishnalal Shridharani's *My India, My America* (Duell, Sloan and Pearce, pp. xii, 647, $3.75) gives the background material for a clear understanding of the alleged Indian paradox. The volume is an interesting mixture of lively narrative, personal experiences in India and America, objective reporting, and interpretative analysis of present-day Indian conditions. No work of recent years, written from the Indian viewpoint, excels this one in its comprehensive picture of Hindustan, its people, their history, politics, industries, national and international policies. Dr. Shridharani, a follower of the Gandhi movement, offers also vivid word-images of the outstanding Indian leaders. Louis Bromfield, who contributes an introduction, says that for him the author has presented India "through the eyes of an Indian but in the idiom of an American, and so the people in the book, their backgrounds, their customs, their traditions, become human and real." The book has the virtue of sincerity and intellectual substance.—SUDHINDRA BOSE.

James M. Read's *Atrocity Propaganda, 1914–1919* (Yale University Press, published for the University of Louisville, pp. xiv, 319, $3.50) is chiefly concerned with differentiation between atrocity and atrocity story. The task is accomplished by search of newspapers, official documents, memoirs and unpublished papers of important officials, monographs on propaganda, and many secondary works, books and articles. The concluding impression as to the actual facts of atrocity falls safely between the extremes of credulous belief and cynical rejection. Close scrutiny of the facts and opinions involved in important situations is always a serviceable task; and that is true of this study. However, emphasis upon unique facts of specific instances of atrocity has deflected the author from full collective analysis. Also, the case analyses are not entirely convincing when they must needs depend upon secondary works, many of which were produced during the years when propaganda about war propaganda was in flower.—HERMAN C. BEYLE.

The Southern Negro and the Public Library (University of Chicago Press, pp. xvi, 218, $2.50), by Eliza Atkins Gleason, is important to librarians and to students of minorities as being the only thorough study of its subject. Mrs. Gleason carefully examines the legal basis for public library service for Negroes, especially in terms of the implications arising from the Gaines case, and includes also an analysis of both white and colored library facilities in the South, with emphasis, naturally, on the

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striking differential in service for the two races. She makes extensive use of charts and tables, some of which are inadequately captioned; and her excellent study rests mainly on personal observation, reports, correspondence with librarians, and questionnaires.—GARLAND DOWNUM.

The purpose of E. C. Buehler, editor, in presenting *Compulsory Military Service* (Noble and Noble, pp. viii, 422) is to supply Vol. VIII in his Annual Debaters' Help Book series and make available for debaters a practical help. The first one-fourth of the volume is devoted to analytical outlines, briefs, and other aids for debaters. The articles and speeches, though rather well selected in general, have now grown considerably out of date, since they were tied to the idea of compulsory training for national defense. Numerous ones, however, present more permanent arguments on the question of compulsory military service as a policy in a democratic state, and these are more to the interest of the student of government. There is no index, but a selected bibliography is included.—H. C. COOK.

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